

MAINE STATE LEGISLATURE

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SIXTH REVISION

THE
REVISED STATUTES

OF THE

STATE OF MAINE

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By the Authority of the Legislature

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CHAPTER 106.

Writ for Replevying a Person.

Sec. 1. Persons entitled to the writ, and from what court. R. S. c. 103, § 1. If any person is imprisoned, restrained of his liberty, or held in duress, unless by a lawful writ, warrant or other process, civil or criminal, he may have the writ for replevying the person, on application made by himself or any one in his behalf, to any justice of the supreme judicial court, or either of the superior courts, in term time or vacation, at the discretion of such justice and not otherwise.

13 Me. 411; 32 Me. 563; 34 Me. 130; 35 Me. 271; 37 Me. 132; 48 Me. 127; 49 Me. 18.

Sec. 2. Issue and service of writ. R. S. c. 103, § 2. The writ shall issue from and be returnable to such court in the county where the plaintiff is confined, and be directed to a proper officer, and served, as soon as may be, fourteen days at least before the return day.

Sec. 3. Form of writ. R. S. c. 103, § 3. The form of the writ shall be as follows:

“STATE OF MAINE.

[L. s.] S——, ss. To the sheriff of our county of S——, or his deputy, Greeting.

We command you, that without delay you cause to be replevied, C. D., who, as it is said, is taken and detained in a place called N., in our said county of S——, by the duress of G. H., that he may appear at our supreme judicial” (or superior) “court, next to be held at ——, within and for the county of S——, on the —— day of —— next, then and there in our said court to demand right and justice against said G. H. for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C. D.,” (the plaintiff,) “before his deliverance, gives bond to the defendant, in such sum as you judge reasonable, with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting of said court, you shall summon the defendant to appear at said court.

Witness J. S., Esquire, our ——, at ——, the —— day of ——, in the year of our Lord nineteen hundred and ——. L. M., Clerk.”

Sec. 4. Bond to be given before writ issues. R. S. c. 103, § 4. No person shall be delivered by such writ until a bond is given by the plaintiff or person suing in his behalf, to be returned to the court with the writ, for the sufficiency of which the officer shall be answerable, as in case of bail in civil actions.

Sec. 5. Judgment, if action is, or is not maintained. R. S. c. 103, § 5. If the plaintiff maintains his action, he shall be discharged and recover his

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costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted, or the parties consent, the court may assess the damages.

Sec. 6. If defendant is entitled to custody of plaintiff. R. S. c. 103, § 6. If it appears that the defendant is bail for the plaintiff, or that, as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a redelivery of his body, to be held or disposed of according to law.

Sec. 7. If defendant has eligned the plaintiff, he may be arrested and give bail. R. S. c. 103, § 7. If it appears that the defendant has eligned the plaintiff's body, so that the officer cannot deliver him, the court, on motion, shall issue a writ of reprisal to take the defendant's body and him safely keep, so that he may be at the next term of the court, to traverse the return of said writ for replevyng the plaintiff; and he may be enlarged by giving bail for his appearance at court, with two sufficient sureties, in such sum as the officer requires.

Sec. 8. Defendant, if guilty, shall be imprisoned; writ of reprisal to issue; suggestion of plaintiff's death. R. S. c. 103, § 8. The defendant may traverse the return on the writ for replevyng the plaintiff; and if it appears that he is not guilty of eloigning the plaintiff, he shall be discharged and recover costs; but if he does not traverse it, or if, on such traverse, it appears that the defendant did eloign the plaintiff; an alias writ of reprisal shall issue, substantially in the form heretofore established and used in the state, on which he shall be committed to jail to remain irrepleviable, until he produces the body of the plaintiff or proves his death. He may suggest the plaintiff's death, and the court shall impanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

See 1821, c. 63, § 10. Writs of Withernam.

Sec. 9. Proceedings, if plaintiff is produced. R. S. c. 103, § 9. If the defendant, after the return of eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore directed to be taken by the officer, when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevyng the plaintiff; and, in either case, the suit shall be tried as aforesaid.

See § 4.