

MAINE STATE LEGISLATURE

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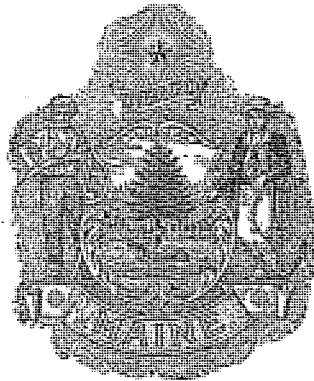
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CHAPTER 107.

Writs of Error, Certiorari, Mandamus and Quo Warranto.

- Sections 1-10 Writs of Error.
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Writs of Error.

Sec. 1. Issued from supreme judicial court. R. S. c. 104, § 1. Writs of error in civil cases may issue out of the supreme judicial court in vacation or term time, returnable to the same court.

16 Me. 82; 19 Me. 220; 23 Me. 253; 24 Me. 438; 26 Me. 420; 28 Me. 237; 29 Me. 360; 30 Me. 199, 423; 31 Me. 59, 420; 32 Me. 187; 33 Me. 251, 266, 351, 368, 511; 36 Me. 200; 59 Me. 149; 60 Me. 521; 64 Me. 204.

Sec. 2. Execution not stayed, unless bond is given and approved. R. S. c. 104, § 2. No writ of error shall stay or supersede execution in any civil action, unless the plaintiff in error, or some person in his behalf, gives bond to the defendant, conditioned, that the plaintiff shall prosecute his suit with effect, and satisfy the judgment rendered therein, in such sum and with such sureties as a justice of the court, or the clerk from whose office the writ issued, approves, according to the rules of court.

47 Me. 175.

Sec. 3. Filing of bond is deemed a delivery; effect thereof. R. S. c. 104, § 3. When the bond is given, the filing of it in the clerk's office for the defendant's use is a delivery thereof; no execution shall be issued on the judgment complained of, while such suit is pending; and if execution has already issued, the clerk shall make a certificate of the issue of the writ and filing of the bond; and after notice thereof to the officer holding the execution, further proceedings thereon shall be stayed.

Sec. 4. Costs to prevailing party; damages and costs, if defendant prevails. R. S. c. 104, § 4. The prevailing party in such writ in a civil action shall be entitled to costs; and if the judgment is affirmed, the defendant in error shall be entitled to not less than six, nor more than twelve per cent a year on the amount of his former judgment, as damages for his delay, and the court may allow him double costs.

12 Me. 459; 14 Me. 196; 72 Me. 260.

Sec. 5. Reversal of judgment does not vitiate sale of real estate; levy is void. R. S. c. 104, § 5. When a debtor's property has been sold on an execution, and the judgment on which it was issued is afterwards reversed on writ of error, the title of the purchaser is not affected thereby; but the defendant in the original suit may maintain an action of assumpsit against the original plaintiff for so much of said judgment as is satisfied. But the levy of an execution upon real estate is void, when the original judgment

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upon which it issued, is reversed by writ of error, brought within a year thereafter; and a copy of the final judgment duly certified by the clerk of courts in the county where such judgment is rendered, shall be recorded within thirty days from the rendition thereof, in the registry of deeds where such levy is recorded.

51 Me. 152, 556.

Sec. 6. One codefendant may bring writ of error, on giving security to the others. R. S. c. 104, § 6. When there were several defendants in the original judgment, either may bring a writ of error in the name of all, on furnishing to each codefendant requiring it, such security against all liabilities arising therefrom, as the court deems reasonable; and at any stage of the proceedings, the court shall, on motion of any such codefendant, require such security.

Sec. 7. Form of writ of error. R. S. c. 104, § 7. The writ of error may be a scire facias issued substantially as follows, without any assignment of errors, or other preliminary proceedings:

"STATE OF MAINE.

[L. s.] ———, ss. To the sheriff, &c.

Greeting:

We command you, that you make known unto ———, of ———, to appear, if he sees cause, before our supreme judicial court, to be held at ———, within and for our said county of ———, on the ——— day of ——— next, to answer to ———, of ———, in a plea of error, whereas the said ——— alleges that in the process, proceedings and judgment had before ———, at ———, on the ——— day of ———, A. D., 19—, wherein said ——— was plaintiff, and said ———, defendant, there occurred the errors hereinafter specified, by which the present plaintiff was injured, and for which he therefor seeks that said judgment may be reversed, recalled or corrected, as law and justice require; that is to say, the following errors: ———.

Hereof fail not, and have you there this writ with your doings thereon.

Witness, ———, Esq., our ———, at ———, the ——— day of ———, A. D. 19—.

—————, Clerk."

85 Me. 370.

Sec. 8. Scire facias shall specify the errors of fact and law. R. S. c. 104, § 8. The scire facias shall specify the errors of fact and law, upon which the plaintiff relies; and a transcript of the record, process and proceedings, attested by the clerk of the court or trial justice rendering the judgment, without further authentication, or the introduction of the record, is competent evidence in such trial; and in case of mistake in the transcript, the court may grant leave to amend.

30 Me. 199; 35 Me. 99; 42 Me. 571; 43 Me. 345; 44 Me. 89; 48 Me. 265; 78 Me. 91, 112; 85 Me. 370; 92 Me. 391.

Sec. 9. Proceedings. R. S. c. 104, § 9. The proceedings upon writs of error, not herein provided for, shall be according to the common law as modified by the practice and usage in the state, and the general rules of court.

23 Me. 254; 24 Me. 438.

Sec. 10. Limitation of writs of error; exceptions. R. S. c. 104, § 10. No writ of error shall be sustained, unless brought within six years after the entering up of the judgment sought to be reversed or avoided; but if the person entitled to such writ is a minor, insane, imprisoned, or not in the United States, when becoming so entitled, then he, his heirs, executors or administrators, may sue out the writ within five years after the removal of such disability.

Writs of Error in Criminal Cases.

Sec. 11. Writ of error in criminal cases. R. S. c. 104, § 11. No writ of error upon a judgment for an offense punishable by imprisonment for life shall issue, unless allowed by one of the justices of the supreme judicial court, after notice to the attorney-general or other attorney for the state.

Sec. 12. Effect; custody of plaintiff; release on bail. R. S. c. 104, § 12. Writs of error shall issue of course upon all other judgments in criminal cases, but not to stay or delay execution of sentence or judgment, unless allowed by a justice of the supreme judicial court, with an express order to stay all proceedings thereon; and in that case the justice may make such order as the case requires, for the custody of the plaintiff in error or for letting him to bail; or, upon a writ of habeas corpus, if entitled thereto, he may procure his enlargement by giving bail.

Writs of Certiorari.

Sec. 13. Issued from supreme judicial court. R. S. c. 104, § 13. All writs of certiorari, to correct errors in proceedings not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established, subject to such further regulations, as are made, from time to time, by such court.

8 Me. 293; 19 Me. 48, 343; 23 Me. 11, 513; 25 Me. 73; 26 Me. 356; 28 Me. 123; 29 Me. 290; 30 Me. 24, 271, 305, 352; 31 Me. 509, 580; 32 Me. 452; 33 Me. 238, 261; 35 Me. 378; 36 Me. 76; 37 Me. 562; 39 Me. 53, 356; 42 Me. 400; 43 Me. 258; 49 Me. 145, 418; 51 Me. 110; 56 Me. 186; 60 Me. 268, 538; 62 Me. 366; 63 Me. 314, 550; 65 Me. 161; 67 Me. 43, 433, 434; 68 Me. 226, 552; 77 Me. 243; 79 Me. 269.

Sec. 14. Proceedings on writ of certiorari. R. S. c. 104, § 14. When the proceedings of any tribunal are brought up by a writ of certiorari, the court may quash or affirm such proceedings, or enter such judgment as the court below should have rendered, or may make such order, judgment or decree in the premises as law and justice may require.

85 Me. 308; 109 Me. 167.

Sec. 15. Costs. R. S. c. 104, § 15. Upon every application for certiorari, and on the final adjudication thereof, the court may award costs against any party, who appears and undertakes to maintain or object to the proceedings.

67 Me. 435; 72 Me. 18; 85 Me. 309; 109 Me. 167.

Sec. 16. Limitation of applications. R. S. c. 104, § 16. No application for a writ of certiorari shall be sustained, unless made within six years next after the proceedings complained of, or within five years from the removal of such disabilities as are described in section ten.

Writs of Mandamus.

Sec. 17. Presentation of petition; questions of law reserved; issue and return of writ. R. S. c. 104, § 17. A petition for a writ of mandamus may be presented to a justice of the supreme judicial court in any county in term time or vacation, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon exceptions or otherwise, for the determination of the full court, which may hear and determine the same as hereinafter provided; but in all cases where exceptions are alleged to any rulings, findings or decrees made upon such petition, the case shall be proceeded with as if no exceptions had been taken, until a decision shall be had and the peremptory writ shall have been ordered, so that the overruling of such exceptions would finally dispose of the case, which shall then be certified to the chief justice of said court as provided in the following section. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.

92 Me. 151; 102 Me. 519; 104 Me. 81; 111 Me. 96.

Sec. 18. Return to writ; answer; judgment and peremptory writ; costs; no action for false return; exceptions and proceedings thereon. R. S. c. 104, § 18. When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or may demur. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus. After judgment and decree that the peremptory writ be granted, the justice of said court before whom the proceedings are pending, shall forthwith certify to the chief justice for decision, all exceptions which may be filed and allowed to any rulings, findings or decrees made at any stage of the proceedings. The excepting party shall, within fifteen days thereafter, forward to the chief justice his written argument upon such exceptions and shall, within said fifteen days, furnish the adverse party, or his attorney, with a copy of such argument; the adverse party shall, within fifteen days after receipt of such copy forward to the chief justice his written argument in reply; and thereupon the justices of said court shall consider said cause immediately, and decide thereon and transmit their decision to the clerk of the court where the petition is pending, and final judgment shall be entered accordingly. If the judgment is in favor of the petitioner, the peremptory writ of mandamus shall thereupon be issued.

102 Me. 519; 108 Me. 524; 111 Me. 96; 113 Me. 283.

Sec. 19. Third person may be cited to show cause; and be heard, and stand as real party. R. S. c. 104, § 19. The court may make rules, on a petition for the writ or upon and after the issuing of the first writ, calling upon any person having or claiming a right or interest in the subject matter, other than the party to whom the writ is prayed to be or has been directed, to show cause against the issuing thereof. If such person ap-

pears, he shall be heard in such manner as the court may direct, and in proper cases he may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

Sec. 20. Proceedings do not abate by death, resignation or removal. R. S. c. 104, § 20. If such third person is admitted, the proceedings shall not abate or be discontinued by the death, resignation or removal from office by lapse of time or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

Quo Warranto.

Sec. 21. Quo warranto proceedings regulated. 1911, c. 63, § 1. Petitions, informations and other processes in quo warranto proceedings may be made returnable before the supreme judicial court, in term time or in vacation, as and when the court or any justice thereof may order, and by like order the cause may be heard in vacation if the justice hearing the same shall determine that justice so requires.

Sec. 22. Proceedings when attorney-general need not be a party. 1911, c. 63, § 2. When in quo warranto proceedings the title to office in a private corporation is involved, the petition or information may be brought in the name of the interested party and the attorney-general need not be a party thereto.

CHAPTER 108.

Actions of Dower.

Sec. 1. Widow may sue for dower. R. S. 105, § 1. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold, she may recover it by a writ of dower as herein provided.
39 Me. 428; 69 Me. 546.

Sec. 2. Demand and time of bringing the action. R. S. c. 105, § 2. She must demand her dower of the person who is, at the time, seized of the freehold, if in the state, otherwise, of the tenant in possession, and shall not commence her action of dower before one month, nor after one year, from the time of demand; but she may make a new demand and commence an action thereon, if an action is not brought within one year after the first demand.

35 Me. 95; 36 Me. 435; 37 Me. 514; 41 Me. 231; 45 Me. 487; 51 Me. 368;
55 Me. 372; 64 Me. 242; 70 Me. 180, 234; 82 Me. 236; 106 Me. 379.

Sec. 3. Demand on a corporation. R. S. c. 105, § 3. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom a writ in a civil action against it may be served; and the time between the demand and the suit shall be sixty days; but a second demand may be made as aforesaid.

70 Me. 181; 106 Me. 379.

Sec. 4. Non-tenure. R. S. c. 105, § 4. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

33 Me. 346; 106 Me. 379.