

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SEVENTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING
EFFECT NOVEMBER 10, 1930



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

Sec. 26. Part owner, to whom no share was assigned, rights of. R. S. c. 93, § 26. When a person, not a party to the proceedings, to whom no share was assigned or left, claims to have been a part owner of the estate, he is concluded so far as it respects the partition, but not from maintaining an action, against each person holding a share, for his proportion of each share as owned before partition was made.

Sec. 27. Person evicted of his share, to have new partition. R. S. c. 93, § 27. When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

Sec. 28. Mortgage, attachment, or lien on a share in common holds the share set out. R. S. c. 93, § 28. A person having a mortgage, attachment, or other lien on the share in common of a part owner shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien remains in force on the part assigned or left to such part owner.

111 Me. 194; *117 Me. 211.

Sec. 29. Lots reserved for public uses to be first set off. R. S. c. 93, § 29. When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made thereof to the land office, with a description of its quality and location; and the commissioners' return of partition, accepted and recorded as before provided, shall be a valid location of such reserved lands.

See c. 11, § 29; 17 Me. 427; 61 Me. 411.

Joint tenants and tenants in common liable in treble damages for cutting trees and timber pending partition, c. 109, § 5.

CHAPTER 103.

Petitions and Actions of Review.

Sections 1- 5 Petitions for Review.
Section 6 Second Review.
Sections 7-15 Actions of Review.

Petitions for Review.

Sec. 1. Review within three years after judgment; special cases. R. S. c. 94, § 1. Any justice of the superior court may grant one review in civil actions, including petitions for partition, and for certiorari, and proceedings for the location of lands reserved for public uses, when judgment has been rendered in any judicial tribunal in said county, if petition therefor is presented within three years after the rendition of judgment, and in the special cases following:

1 Me. 324; 3 Me. 93; 4 Me. 61, 537; 6 Me. 412, 479; 8 Me. 212; 19 Me. 108, 260;
24 Me. 170; 27 Me. 537; 33 Me. 233, 586; 39 Me. 170; 67 Me. 408; 72 Me. 366;
102 Me. 421; 122 Me. 264.

I. When a petition for a review of an action defaulted without appearance is presented within three years after an officer having the execution issued on the judgment therein demands its payment of the defendant or his legal representative.

33 Me. 586; 42 Me. 571; 73 Me. 30; 84 Me. 303.

II. When the petitioner shows that a witness testified falsely to material facts against him in the trial of the action, whereby he was surprised, and was then unable to prove the falsity, but has since discovered evidence, which with that before known, is, in the opinion of the court, sufficient proof that the testimony was false; or if the witness has been convicted of perjury therefor.

1 Me. 324; 3 Me. 93; 56 Me. 550; 78 Me. 214.

III. On the petition of a party in interest who was not a party to the record, setting forth the fact of such interest, and upon filing a bond with sufficient surety or sureties, approved by the presiding justice, to secure the party of record against any judgment recovered by the defendant in review.

63 Me. 464; 81 Me. 203; 112 Me. 240; *116 Me. 378.

IV. When a judgment has been rendered on the report of referees in an action referred by rule of court, if other matters in dispute between the parties were included in the rule of reference. The depositions used before the referees may be used on the hearing of such petition, and if review is granted, they may be used at the trial; and all matters embraced in the rule of reference, although not wholly contained in the writ, shall be included and tried in review.

60 Me. 53.

V. When a material amendment of the declaration is made after entry of the action, without actual notice thereof to the defendant, and judgment is rendered on default, a review may be granted before execution of final process in the action, or within three years thereafter.

74 Me. 526.

VI. In cases mentioned in section fifty-one of chapter ninety.

VII. A review may be granted in any case where it appears that through fraud, accident, mistake, or misfortune, justice has not been done, and that a further hearing would be just and equitable, if a petition therefor is presented to the court within six years after judgment.

42 Me. 571; 60 Me. 52, 438; 62 Me. 191; 63 Me. 120; 67 Me. 408; 69 Me. 150; 93 Me. 146; 102 Me. 421; 105 Me. 509; *107 Me. 336; 109 Me. 142; 112 Me. 203, *240; *115 Me. 89; 128 Me. 368.

VIII. Any defendant in the original judgment may petition in the name of all, by furnishing to each of his co-defendants requiring it, such security against all liability therefrom as the court deems reasonable; and the court, on motion of any original co-defendant shall require such security in any stage of the proceedings.

44 Me. 84.

Sec. 2. Signature to petition by attorney; attachment; notice. R. S. c. 94, § 2. A petition for review may be signed by the petitioner's attorney when the facts therein stated are known to him, and the petitioner is out of the state at the time of filing it; and the petition may be inserted in a writ of attachment and property may be attached thereon, the same as on other writs; notice thereon may be ordered by any justice of the superior court in term time or vacation, returnable in the county where the judgment was rendered, and it must be given accordingly.

See c. 96, § 1; 59 Me. 156; 64 Me. 204; 104 Me. 81.

Sec. 3. Evidence discovered pending petition. R. S. c. 94, § 3. When a petitioner discovers new and important testimony during the pendency of his petition, he may avail himself of it at the hearing by serving notice thereof on the adverse party fourteen days at least before court, stating the names of the witnesses, and in substance what he expects to prove by them.

6 Me. 412; 36 Me. 11.

Sec. 4. New evidence and names of witnesses must be stated on oath. R. S. c. 94, § 4. When the discovery of new evidence is alleged in the petition, the

names of the witnesses to prove it, and what each is expected to testify, must be stated under oath. Newly discovered cumulative evidence is admissible, and shall have the same effect as other newly discovered evidence.

44 Me. 65, 83; 50 Me. 119; 53 Me. 356; 56 Me. 550; 74 Me. 210; 96 Me. 509; 126 Me. 294.

Sec. 5. Stay of execution or supersedeas on filing bond. R. S. c. 94, § 5. On presentation of a petition for review, any justice of said court may in term time, or in vacation, stay execution on the judgment complained of, or grant a supersedeas, upon a bond filed with sureties approved by him, or by such person as he appoints, in double the amount of the damages and costs, conditioned to pay said amount if the petition is denied, or the amount of the final judgment on review, if it is granted, with interest thereon at the rate of twelve per cent from the date of the bond to the time of final judgment.

47 Me. 439; 64 Me. 237; 104 Me. 81; 128 Me. 368.

Second Review.

Sec. 6. Second review. R. S. c. 94, § 6. A second review may be granted on a petition filed within three years after judgment on the first, when the court thinks that justice manifestly requires it, and on such terms as it imposes; but no second review shall be granted except by the law court, in a case in which more than one verdict has been rendered against the petitioner.

74 Me. 209.

Actions of Review.

Sec. 7. Issue and entry of writ; copies to be produced. R. S. c. 94, § 7. When a review is a matter of right as provided by section five of chapter ninety-six, or when it is granted on petition, a writ of review shall be issued, and the trial shall take place in the superior court in the county in which the judgment was rendered. It shall be entered at the next term after the review is granted, unless leave is granted to enter it at the second term; and the plaintiff in review shall produce and file an attested copy of the writ, judgment, proceedings, and depositions, or their originals, in the former suit.

1 Me. 405; 61 Me. 336; 68 Me. 480; 72 Me. 338; 111 Me. 72.

Sec. 8. Recitals of writ; service. R. S. c. 94, § 8. In the writ of review, it is sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

111 Me. 68.

Sec. 9. When original plaintiff is plaintiff in review, attachment. R. S. c. 94, § 9. When the original plaintiff is plaintiff in review, the property of the defendant may be attached, as it might have been in the original suit and the form of the writ shall be varied accordingly; but no attachment made, or bail taken, in the original action, shall be held to satisfy the judgment on review.

111 Me. 66.

Sec. 10. Pleadings. R. S. c. 94, § 10. The proper pleadings shall be made on review, when no issue has been joined before judgment in the original action; when issue has been so joined, the cause shall be tried thereon; but amendments, brief statements, and other issues may be made by leave of court, and the cause tried and disposed of as if it were an original suit.

Sec. 11. Judgment. R. S. c. 94, § 11. Judgment in the suit reviewed shall be given without regard to the former judgment, except as follows. When the

CHAP. 103

original plaintiff recovers on review as debt or damage, a sum exceeding that recovered by the first judgment, he shall have judgment for the debt or damage recovered on review, or for so much thereof as remains unsatisfied, and for costs on review.

38 Me. 113; 47 Me. 438; 64 Me. 238; 73 Me. 247; 111 Me. 71; 122 Me. 464.

Sec. 12. When sum first recovered is reduced, judgment, how rendered; and when wholly reversed; costs. R. S. c. 94, § 12. When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs on review; and if the former judgment has not been satisfied, one judgment may be set off against the other, and execution be issued for the balance. When the original judgment is wholly reversed, judgment shall be entered in review for the amount of the former judgment and costs, with interest thereon, and for such further sum as the prevailing party would have been entitled to recover as costs in the original action, if, in the opinion of the court, justice requires it. In such case, if the original judgment remains unpaid, it shall be canceled by a set-off entered of record in the judgment on review, and execution shall issue for the balance only; otherwise for the amount of the latter judgment.

1 Me. 255; 2 Me. 397; 38 Me. 113; 47 Me. 440, 529; 48 Me. 288; 64 Me. 238; 73 Me. 247; 107 Me. 486; 111 Me. 71.

Sec. 13. In replevin and set-off, plaintiff is as defendant. R. S. c. 94, § 13. When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant is in the position of a plaintiff, so far as it respects the damages awarded to him.

Sec. 14. When levy is void. R. S. c. 94, § 14. If, on a petition for review, commenced within one year after an execution issued on the original judgment is levied on real estate, such judgment is finally reversed, the levy is void, and a copy of the final judgment in review 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.

47 Me 529.

Sec. 15. Party prevailing has costs; court may impose terms. R. S. c. 94, § 15. In all actions of review the party prevailing recovers costs, and shall also recover the costs to which he would have been entitled if he had prevailed in the original action, unless the court otherwise orders; but the court granting a review may impose terms respecting costs.

1 Me. 255; 2 Me. 397; 40 Me. 332; 64 Me. 239; 73 Me. 247; 107 Me. 486.