

MAINE STATE LEGISLATURE

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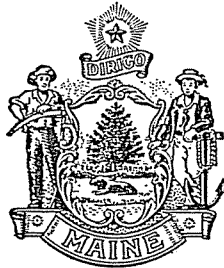
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Sec. 19. Judgment for damage; execution for plaintiffs' share; scire facias by cotenants. R. S. c. 109, § 19. The court shall enter judgment for the whole amount of the injury proved; but shall award execution only for the proportion thereof sustained by the plaintiffs; and the remaining cotenants may afterwards jointly or severally sue out a scire facias on such judgment, and execution shall be thereupon awarded for their proportion of the damages adjudged in the original suit.

83 Me. 103; *93 Me. 115.

Sec. 20. If one or more joint tenants take the whole rent, others may recover. R. S. c. 109, § 20. If any one or more of the joint tenants or tenants in common take the whole rents or income in the joint estate, or more than their share, without the consent of their cotenants, and refuse, for a reasonable time after demand, to pay such cotenants their share thereof, any one or more of them may have an action of special assumpsit against the refusing cotenants to recover their proportion thereof.

64 Me. 465; 72 Me. 406; *79 Me. 89; *92 Me. 604.

CHAPTER 112.

REPLEVIN OF BEASTS AND GOODS.

Sections 1- 7 Replevin of Beasts.

Sections 8-19 Replevin of Goods.

Replevin of Beasts

Sec. 1. Owners of beasts distrained may replevy. R. S. c. 110, § 1. 1933, c. 118, § 1. Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer, before any trial justice or judge of any municipal court in the county, in the form prescribed by law; or, if the value of the beasts distrained is more than \$20, in the superior court.

See 1821, c. 63, § 9; 17 Me. 189; 18 Me. 249; *28 Me. 489.

Sec. 2. Writ, service, and return. R. S. c. 110, § 2. 1933, c. 118, § 1. The writ shall be sued out, served, and returned, and the cause heard and determined like other civil actions before a trial justice or municipal court, except as otherwise prescribed.

114 Me. 225.

Sec. 3. Bond must be given before service; when new sureties must be furnished. R. S. c. 110, § 3. The writ shall not be served unless the plaintiff, or some one in his behalf, executes and delivers to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, or with a surety company authorized to do business in this state, as surety, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ, and to be returned with the writ for the use of the defendant; and, if it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties

thereto; and, if not so furnished, it may dismiss the action and order a return of the property replevied, or make such other order as is deemed reasonable.

See § 10; c. 56, § 193, re foreign surety companies.

Sec. 4. Judgment, if the beasts are lawfully distrained. R. S. c. 110, § 4. If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the damages for which the beasts were distrained, with legal fees, costs, and expenses occasioned by the distress, and costs of the replevin suit; or, instead thereof, the justice or court may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin suit.

*28 Me. 491.

Sec. 5. If unlawfully distrained. R. S. c. 110, § 5. If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

Sec. 6. Appeal. R. S. c. 110, § 6. Either party may appeal as in other civil actions.

22 Me. 558.

Sec. 7. Certain causes transferred to the superior court. R. S. c. 110, § 7. 1933, c. 118, § 1. When it appears that the sum demanded as damages exceeds \$20, or that the property in the beasts is in question and their value exceeds \$20, or that the title to real estate is in question, at the request of either party, the case, if originally brought before any trial justice or judge of any municipal court, shall be transferred to the superior court to be there disposed of like actions brought before a trial justice in which the title to real estate is brought in question; but the party requesting such transfer shall recognize in such reasonable sum as the justice orders, to enter the action at the next term of said court, prosecute it with effect, and pay all intervening damages and costs.

See c. 98, § 1, re proceedings when title to real estate is in question.

Replevin of Goods

Sec. 8. Goods, unlawfully detained, may be replevied. R. S. c. 110, § 8. When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on execution, are claimed by any person other than the defendant in the suit in which they are so attached or taken, such owner or person may cause them to be replevied.

See c. 99, § 45, re exemption from suit of officer attaching mortgaged property; 3 Me. 186; 4 Me. 315; 12 Me. 261; 15 Me. 246, 375; 19 Me. 258, 285; 20 Me. 289; 32 Me. 323; 40 Me. 580; 56 Me. 293, 558; *59 Me. 114; 63 Me. 465; 64 Me. 315; 65 Me. 564; 67 Me. 209; *103 Me. 136.

Sec. 9. Jurisdiction. R. S. c. 110, § 9. 1933, c. 118, § 1. Actions of replevin of goods shall be brought in the county where they are detained. The action may be brought before any municipal court or trial justice in said county, if the value of the goods does not exceed the amount to which the civil jurisdiction of such court or justice is limited; otherwise the action shall be brought before the superior court.

12 Me. 262; 40 Me. 581; 113 Me. 104; *115 Me. 116.

Sec. 10. Bond given before service. R. S. c. 110, § 10. Before serving the writ, the officer shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties or with a surety company authorized to

do business in this state as surety, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties or surety company may be required thereon as provided in section 3.

See 1821, c. 63, § 9; 11 Me. 132; 16 Me. 35; 20 Me. 97; 27 Me. 447; *28 Me. 251; 34 Me. 88; 37 Me. 26; *39 Me. 517; *54 Me. 119; *63 Me. 464; 72 Me. 375; 73 Me. 124; *86 Me. 220; 92 Me. 202; 106 Me. 525; 120 Me. 508; 123 Me. 117; 126 Me. 552, 593; 128 Me. 481.

Sec. 11. If defendant prevails, he to have a writ of return with damages and cost; judgment, when property is held as security. R. S. c. 110, § 11. If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure.

15 Me. 246, 375; 31 Me. 298; 47 Me. 522; 53 Me. 316; 55 Me. 364; 56 Me. 138; *58 Me. 478; *62 Me. 361; 86 Me. 221; *123 Me. 119; *124 Me. 383; 125 Me. 190.

Sec. 12. Damages on judgment for return of property attached or taken on execution. R. S. c. 110, § 12. If the goods, when replevied, had been taken in execution or were under attachment, and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of 12% a year on the value of the goods while the service of the execution is so delayed.

*58 Me. 478; 69 Me. 446.

Sec. 13. Disposal of money recovered by officer, for goods attached or taken on execution. R. S. c. 110, § 13. All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him, or recovered in a suit upon the replevin bond, shall be applied:

I. To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin suit, and of the action on the bond, so far as they are not reimbursed by the costs recovered.

II. To pay the creditor, at whose suit the goods were attached or taken on execution, the sum, if any, recovered by him in that suit, or what remains unpaid, with interest at the rate of 12% a year for the time that the money was withheld from the creditor, or the service of his execution was delayed by reason of the replevin.

III. If the attaching creditor in such case does not recover judgment in his suit, or if any balance remains of the money so recovered by the officer, after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should have been applied if such goods had been sold on execution.

123 Me. 119.

Sec. 14. Appropriation of the money received by the creditor. R. S. c. 110, § 14. All sums received by such creditor from the sale of goods attached or taken in execution, and afterwards returned, all sums received for the value of any of such goods as are not returned, and all sums recovered from the officer for insufficiency of the bond shall be applied in discharge of the creditor's judg-

ment; but all sums received as interest or damages for delay of his execution shall be retained to his own use, and not go in discharge of the judgment.

Sec. 15. Judgment, if plaintiff recovers. R. S. c. 110, § 15. If it appears that the goods were taken, attached, or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby and for his costs.

6 Me. 262; 12 Me. 54; 15 Me. 21, 246; 20 Me. 88; 21 Me. 509; 40 Me. 286; *56 Me. 173; 123 Me. 118.

Sec. 16. Continuance of attachment, if goods are replevied. R. S. c. 110, § 16. If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until 30 days after judgment in the suit in which they were attached; and if such final judgment is rendered before the return of the goods, or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for 30 days after the return, and may be taken and disposed of as if they had not been replevied.

See c. 99, § 72 et seq., re dissolution of attachments.

Sec. 17. When writ of reprisal may issue. R. S. c. 110, § 17. When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return; and the court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts, not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

See 1821, c. 63, § 9. Writ of Withernam.

Sec. 18. Defendant's remedy on the replevin bond. R. S. c. 110, § 18. The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for insufficiency of the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal as aforesaid.

11 Me. 69; 18 Me. 261; 21 Me. 509; 33 Me. 387; 46 Me. 410; 53 Me. 425; *54 Me. 121; 55 Me. 364; *56 Me. 173; 69 Me. 446; 72 Me. 477; 73 Me. 128, 386; 79 Me. 452; 120 Me. 506; *123 Me. 119.

Sec. 19. Limitation of surety's liability on a replevin bond. R. S. c. 110, § 19. No action shall be maintained against any surety in a replevin bond, unless the writ is served on him within 1 year after final judgment in replevin; or, if the action is not entered by the plaintiff and the defendant does not obtain judgment upon a complaint, such writ against the surety may be served on him within 1 year after the end of the term at which the action of replevin ought to have been entered, and not afterwards.

62 Me. 534.