

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES
OF THE
SIXTIETH LEGISLATURE

OF THE
STATE OF MAINE.

1881.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1881.

inch square in the clear, or greater, shall not be subject to the provisions of this section. *Provided, however,* that dip-nets may be used from the first day of April to the twentieth day of April.'

CHAP. 68.

Proviso.

Approved March 15, 1881.

Chapter 68.

An act to regulate the practice in Equity Proceedings.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECT. 1. The supreme judicial court shall always be open in each county for equity proceedings, except upon days upon which, by law, no court is to be holden, and in the first instance, except as herein provided, all hearings shall be had, all orders and decrees made, and all process issued by a single justice of said court, except upon appeal or exceptions as hereinafter provided, and said court shall establish rule-days for the return of subpoenas and the transaction of business relating to equity cases.

The supreme judicial court to be open for equity proceedings.

SECT. 2. All causes in equity shall be begun by bill of complaint filed in the clerk's office, upon which subpoena shall issue as matter of course, returnable to the first day of a term of court for the county where it is filed, or upon a rule-day, which in either case shall be holden within sixty days after the filing of such bill, and such subpoena shall be served at least fourteen days before the return day thereof; or by order of the court such subpoena may be made returnable on any day in or out of term, and be served as directed in such order; or such bill may be inserted in a writ of attachment, upon which property may be attached and which shall be made returnable as writs at common law. In all cases, service shall be made by copy of the subpoena and bill or writ of attachment. The bill of complaint shall state the material facts and circumstances relied on by the complainant, with brevity, omitting immaterial and irrelevant matters, and may be amended or re-formed at the discretion of the court, with or without terms, at any time before final decree is entered in said cause.

Causes in equity, how begun, return of subpoena, etc.

Service, how made.

Bill of complaint may be amended.

CHAP. 68.

Bill of discovery
and answers
thereto.

SECT. 3. If discovery is sought it may be by bill, with or without interrogatories annexed thereto, for the purpose of such discovery. Answers thereto shall be made within thirty days after the return day of such bill, or within such time as the court shall order, and questions arising thereon shall be determined by the rules established by the supreme judicial court as herein provided, and in the absence thereof by the rules applicable to bills of discovery in equity procedure.

When respondent
shall appear.

SECT. 4. When process is made returnable to any regular term of the court, the respondent shall appear within the first three days of the term, otherwise he shall appear on the return day of such process; and in default of such appearance, on motion of the complainant in writing, the bill shall be taken, pro confesso, as matter of course, at the expiration of ten days after the filing of such motion, but such decree for good cause shown, on motion of the respondent, may be opened within ten days after it is made, and in such case the court shall fix the time for making a defence.

Proceedings in
case of default.

Defence, how and
when made.

SECT. 5. Defence shall be made by answer, plea or demurrer, within thirty days next after the time for appearance shall have elapsed, or within the time ordered by the court, as provided in the preceding section; but for good cause shown the court may in either case enlarge the time therefor. In default of such defence the bill shall be taken, pro confesso, as matter of course, on motion of complainant in writing, filed on any day after such default and served on the respondent. But such decree may be opened on motion of respondent within ten days thereafter as provided in section four of this act. All answers shall be signed by the respondent and sworn to by him if the complainant in his bill asks for an answer upon oath, otherwise it may be signed by the respondent, his agent or attorney, and in such case shall have no effect as evidence, except to cast the burden of proof upon the plaintiff.

Proceedings in
case of default.

Form of answer.

Replication, when
to be filed.

SECT. 6. The complainant shall file a replication within fifteen days after notice has been served on him or his counsel that answer or plea has been filed, but such time may be enlarged on such terms as the court shall order, or the bill may be dismissed for want of prosecution on motion filed by respondent at any time after said fifteen days, or at the expiration of the time ordered by the court for filing such replication.

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SECT. 7. Sixty days after issue joined shall be allowed for taking testimony, or the court, on motion of either party, may fix the time for complainant's testimony, to be followed by respondent's testimony, and testimony of complainant in rebuttal, each within a fixed time, and in either case, the court may enlarge the time for good cause shown.

Time for taking testimony.

SECT. 8. When the time for taking testimony in chief, in answer, and in rebuttal is fixed in successive periods, as provided in the foregoing section, at the close of each period or the enlargement thereof, the testimony taken therein shall be filed, opened by the clerk and submitted to the inspection of the other party, and when the time for taking testimony shall be finally closed, either party may, on motion, as matter of course, have publication thereof, and on motion of either party the cause may be set down by the court, to be heard on bill, answer or plea, and proofs, at any time after publication; and on like motion it may be set down to be heard on bill and demurrer at any time after the demurrer is filed, and on motion of complainant it may be set down to be heard on bill and answer or plea, at any time after the expiration of the time fixed for taking testimony.

Testimony to be filed, submitted to other party for inspection, and either party may on motion have publication thereof.

Cause may be heard on motion of either party.

SECT. 9. The justice before whom such hearings shall be had, shall have full power to decide any motion or cause so heard, and shall make and enter such order and decree, as shall seem just and proper to him, and in accordance with the established principles of equity jurisprudence, subject to appeal and exceptions as hereinafter provided. Evidence may be taken by deposition or orally in presence of the court, or by an examiner appointed by the court. But all oral evidence shall be taken and reduced to writing by a stenographer or an examiner, and his copy, approved by the judge or certified to by the examiner, shall be used as testimony in the cause the same as a deposition.

Justice to decide cause, subject to appeal.

Evidence, how taken and used.

SECT. 10. From all final decrees of such justice, an appeal shall lie to the next law court to be held in the district where the cause is pending. Said appeal shall be claimed by an entry on the docket of the court from which the appeal is taken, within ten days after such decree is signed, entered and filed, and notice thereof has been given by such clerk to the parties or their counsel. The appellant shall enter such appeal, and furnish written or printed copies of the case on

Appeal to lie to next law court, how claimed, when heard.

CHAP. 68. the first day of said law term, and for good cause shown, the law court may enlarge the time for furnishing such copies. Such appeals shall be heard at the term to which they are taken, unless otherwise agreed, or the law court shall for good cause, order a further time for the hearing thereof, and the law court shall on such appeal, affirm, reverse or modify the decree of the court below, or remand the cause for further proceedings, as it shall deem proper. All cases in which appeals or exceptions are taken from a final decree, shall remain on the docket of the court below, marked law, and decree shall be entered therein by a single justice, in accordance with the certificate and opinion of the law court.

Law court shall affirm, reverse or modify decree of court below, or remand for further proceedings.

Cases shall remain on docket of court below, marked law.

Justice may make orders for protection of rights of parties while appeal is pending.

SECT. 11. When an appeal is taken from a final decree, any justice may also make such order for the appointment of receivers for injunction and prohibition, or for continuing the same in force, and such other orders as are needful for the protection of the rights of the parties, or are usual in equity proceedings in such cases, until the appeal shall be determined by the law court. Such orders may be modified or annulled by such justice, or by such law court, while the appeal is pending before it.

Appeal may be taken from decree or order, effect.

SECT. 12. An appeal may be claimed and taken in like manner from any interlocutory decree or order, but such appeal shall not suspend any proceedings under such decree or order, or in the cause, and shall not be taken to the law court until after final decree. Upon an appeal from a final decree, all previous decrees and orders shall be open for revision, reversal or approval.

Justice may report cause to law court, if parties agree.

SECT. 13. Upon a hearing in any cause in equity, the justice hearing the same may report the cause to the next law court held within the district in which the cause is pending, if he is of opinion that any question of law is involved, of sufficient importance or doubt to justify the same, and the parties agree thereto. The cause shall be entered and copies furnished by the complainant, and the same shall be heard and decided by said law court in like manner and with like results as is herein provided in case of appeals.

Cause, how entered, heard and decided.

Justice may grant further time of appeal in certain cases.

SECT. 14. If any party intending to appeal, shall, within the time limited therefor, fail to do so by accident or mistake, he may within thirty days after the entry of the decree apply to any justice for leave to take such appeal, which may be

granted on such terms as shall appear to it, to be just and equitable. CHAP. 68.

SECT. 15. Either party aggrieved may take exceptions to any ruling of law made by a single justice in any matter, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within the time allowed for appeal, and shall be made up, allowed and filed in the time provided therefor, unless further time is granted by the court, or by agreement of parties. In all other respects, such exceptions shall be taken, entered in the law court, and there heard and decided in like manner as appeals, with the same power in the single justice to make orders for injunction and prohibition, and the protection of the rights of the parties, and in the law court, to make orders and decrees pending the same and upon decision thereof; *provided*, that no question of fact shall be open to the law court on such exceptions. And upon request of either party, the justice hearing the cause shall give separate findings of law and fact. The allowance and hearing of exceptions shall not suspend the other proceedings in the cause.

Aggrieved party may take exceptions to rulings of justice.

Exceptions when claimed, made up, allowed and filed.

Proviso.

Upon request, the justice shall give separate findings of law and fact.

Other proceedings not to be suspended.

Date of order and decree.

SECT. 16. Every order and decree shall bear date upon the day on which it is filed and entered, and the day of such filing and entering shall be entered by the clerk upon the docket and on the decree.

SECT. 17. No process for the enforcement of a final decree save for the appointment of receivers, for injunction or prohibition, or for continuing the same, shall issue until the lapse of ten days from the entry of such decree, unless all parties waive an appeal by entry on the clerk's docket, or by writing filed in the cause, or consent in like manner to the issue thereof.

Process for enforcement of final decree shall not issue until the lapse of ten days from entry unless parties waive appeal.

SECT. 18. Any hearing on a motion for an interlocutory decree or order may be had, or such order or decree passed, out of the county in which the cause is pending, on notice to the adverse party therefor. And the justice hearing the same shall transmit to the clerk of the county where the cause is pending any order or decree made at such hearing, but no trial before a jury upon issues framed therefor or final hearing of the cause, shall be had out of the county where the bill is pending, without the consent of the parties.

Certain proceedings may be had out of the county in which the cause is pending on notice to adverse party.

CHAP. 68.

Evidence before court below, how reported.

No witnesses to be heard orally before law court.

The court may frame issues of fact in equity cases to be tried by jury.

A single justice may confirm or set aside verdicts.

Appeal may be taken and exceptions had to rulings of law.

Writs of seizin or execution and other process may issue.

Preliminary injunctions may be granted complainant.

—may be granted to either party if court direct.

SECT. 19. All evidence before the court below or an abstract thereof, approved by the justice hearing the case, shall on appeal be reported. No witnesses shall be heard orally before the law court as a part of the case on appeal, but it may authorize additional evidence to be taken when the same has been omitted by accident or mistake, or discovered after the hearing, in such manner and on such terms as it shall deem proper.

SECT. 20. The court may, in its discretion and upon the application of either party, frame issues of fact in equity causes to be tried by a jury in the county where such cause is pending. A single justice may confirm any verdicts rendered upon such issues of fact, and enter appropriate decrees thereon, or such justice may set aside such verdicts, and render such decrees as equity may require, as if such issues of fact had not been framed. In all causes where such issues of fact are framed and tried, an appeal may be taken, and exceptions had to rulings of law, as herein before provided, and upon such appeal or exception, the law court shall have power to confirm or set aside the verdicts rendered in the cause, or order a new trial of such issues of fact, and make such disposition of the cause as the equity of the case shall demand. All such appeals and exceptions shall be taken, heard and determined as provided by this act.

SECT. 21. Writs of seizin or execution as well as all other process appropriate to causes in equity may be issued by the court, to enforce its decrees.

SECT. 22. Preliminary injunctions may be granted by a single justice upon the complainant filing a bond with sufficient sureties conditioned to pay all damages and costs caused thereby, if he shall finally be found not entitled to such injunction, unless a single justice, on motion to dissolve the same and hearing on the merits thereof, shall refuse to dissolve it. Such damages and costs shall be awarded by the court on motion, but if not so awarded before final decree they may be determined in a suit on such bond. Such injunction may also be granted to either party on hearing, without bond being given upon oral evidence, depositions or affidavits, and upon such notice and with such time for pleading, evidence and hearing as the court shall direct. No preliminary injunction shall be granted to either party unless his pleadings shall

contain an application therefor; but an injunction may be granted pending the suit in proper cases therefor, upon motion and hearing. Perpetual injunctions may be granted by the court or any justice thereof making final decree.

Perpetual injunctions, by whom granted.

SECT. 23. Whenever any party shall complain in writing, and under oath, that the process, decree or order of the court, which is not for the payment of money only, has been disregarded or disobeyed, summary process shall issue by order of any justice of the court, requiring the person so alleged to have disregarded or disobeyed such process to appear on a day certain and show cause why he should not be adjudged guilty of contempt, and such process shall fix a time for answer to the complaint, and may fix a time for hearing on oral testimony, depositions or affidavits, or may fix successive times for proof, counter proof, and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may, for good cause, enlarge the time for such hearing. If the person so summoned shall not appear as directed, or shall not attend the hearing at the time appointed therefor, as enlarged, or if he is found, upon hearing, to have been guilty of such disregard or disobedience, he shall be adjudged in contempt, and the court may issue a *capias* to bring him before it to receive sentence, and may punish him by such reasonable fine or imprisonment as the case may require. The court may allow such offender to give bail to appear at a time certain, at which such punishment may be imposed, if he shall continue in contempt. But when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail shall be allowed. When such person shall purge himself of his contempt, the justice may remit such fine or imprisonment or any portion thereof. No appeal shall lie from any order or decree for such punishment, nor shall exceptions thereto be allowed, save upon questions of jurisdiction, nor in any case shall such exceptions suspend the enforcement of any such order or decree, unless the court shall so direct.

Summary process shall issue by order of court when decree is disobeyed.

Proceedings and punishment when found guilty of contempt.

SECT. 24. When any justice deems any exceptions allowed by him, or any appeal in any proceeding in equity, provided for by this act, to be frivolous and intended for delay, he may so certify on the motion of the party not excepting, and such exceptions and appeal and the record connected therewith

Justice may certify exceptions to be frivolous and intended for delay, on motion, to chief justice.

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Proceedings.

shall be transmitted to the chief justice, and shall be argued in writing on both sides within thirty days thereafter, unless the judge transmitting the same, shall, for good cause, enlarge the time, and shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the cause is pending; and if the decision shall be adverse to the party taking such appeal or exceptions, treble costs may be allowed the prevailing party.

Absent respondent not served with process, shall have review within one year.

SECT. 25. In case of any decree an absent respondent whose property has been attached and who does not appear by the record to have been served with process within the state and has made no appearance before final process, shall have a review within one year after final decree, as of right with stay or supersedeas of such process. The respondent may in such case apply to any justice by petition setting forth the grounds for such review, whereupon if such justice shall order reasonable notice to the other party, to appear at time and place named therein, to show cause why such review should not be granted, when such review is granted, the justice may prescribe the time in which the respondent's defense shall be made. Reviews may also be granted on petition, whenever without fault of the party against whom decree was ordered by fraud, accident or mistake, justice has not been done; provided, the petition therefor shall be filed within six years after final decree, and notice may be ordered and served with like rights of stay or supersedeas as herein provided. Upon granting the review, the court may fix a time within which the next proceeding shall be had.

Proceedings.

When review may be granted.

Power of court to hold orders and decrees subject to revision, except when decided on appeal, not abridged.

SECT. 26. Nothing herein contained shall abridge the power of the court to hold all interlocutory orders and decrees subject to revision, at any time before final decree, except when they shall have been decided on appeal.

Court to make rules for practice in equity cases.

SECT. 27. It shall be the duty of the court to make all proper rules for the regulation of the practice in equity causes, necessary to simplify proceedings, discourage delays and lessen the expense of litigation, and shall have full power for that purpose; but no rule of court now existing is repealed hereby, except so far as it is inconsistent herewith.

Pending cases not affected. Inconsistent acts repealed.

SECT. 28. This act shall not affect pending cases.

SECT. 29. All acts and parts of acts inconsistent herewith are hereby repealed.