

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

CHAP. 132. the neglect of the finder, then to pay the same on demand, after converting the same to his own use, the same may be recovered in an action, to be brought by said treasurer in the name of the town.

Penalty, if finder neglect.
1821, 130, § 6.

SECT. 18. If any finder of any lost money or goods, of the value of three dollars or upwards, shall neglect to give notice thereof to the town clerk, and cause the same to be cried and advertised, in time and manner, as provided in the thirteenth and fourteenth sections of this chapter, he shall forfeit the full value of such money or goods, one half to the use of the town, and the other half to him who shall sue for the same; and shall moreover remain responsible to the owner of such lost money or goods.

CHAPTER 133.

OF DEPOSITIONS, AND MODES OF TAKING THEM; AND OF WITNESSES.

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| <p>SECT. 1. In what cases, depositions may be used.</p> <p>2. Before whom they may be taken.</p> <p>3. When a cause is deemed, pending, for the purpose.</p> <p>4. Reasons, for which they may be taken and used.</p> <p>5. Summons to deponent, and citation to the adverse party.</p> <p>6. Service of such citation.</p> <p>7. Who is to be considered attorney of the adverse party.</p> <p>8. Notice to one of the adverse party, sufficient.</p> <p>9. Time of notice.</p> <p>10. Verbal notice, by the justice or notary.</p> <p>11. Form of citation to adverse party.</p> <p>12. Form of summons to deponent.</p> <p>13. Witness may be compelled to give his deposition.</p> <p>14. How depositions may be taken, out of the state.</p> <p>15. Deponent to be sworn, before examination.</p> <p>16. Who may write the deposition.</p> <p>17. Form of caption.</p> <p>18. Deposition to be delivered in court, or sealed up.</p> <p>19. Not to be used, if the reason for taking it no longer exists.</p> <p>20. Objections to competency of a witness, or to questions proposed, when to be made.</p> <p>21. When depositions may be used in a second suit.</p> <p>22. When depositions may be used, taken out of the state.</p> <p>23. Commissions to take depositions out of the state.</p> | <p>SECT. 24. Witnesses may be compelled to give depositions in cases of contested elections.</p> <p>25. Application for taking a deposition in perpetuum.</p> <p>26. Notice to persons interested.</p> <p>27. Deposition, how taken, and certificate thereon.</p> <p>28. To be recorded.</p> <p>29. When it may be used in evidence.</p> <p>30. Such depositions may be taken, out of the state.</p> <p>31. Application to the court for a commission therefor.</p> <p>32. Notice to persons interested.</p> <p>33. Court may issue a commission.</p> <p>34. Deposition to be taken upon interrogatories.</p> <p>35. Application may be filed in vacation, and notice given.</p> <p>36. Proceedings, to compel a deponent to appear, to give his deposition.</p> <p>37. Punishment, if he refuse to depose.</p> <p>38. Certain deponents may affirm.</p> <p>39. If a false deposition be given, it is to be deemed perjury.</p> <p>40. Witnesses may be summoned into another state to testify in criminal cases.</p> <p>41, 42. Mortgagee to disclose the amount due on the mortgage; to an attaching creditor of the mortgager.</p> <p>43. May be compelled to give his deposition.</p> <p>44. Who are competent witnesses.</p> <p>45. How records of courts of other states are to be authenticated.</p> |
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SECTION 1. Depositions, taken for any of the causes and in the manner hereinafter mentioned, may be used in all civil suits or causes, petitions for partition of land, libels for divorce, prosecutions for the maintenance of bastard children, petitions for review, and in trials before arbitrators, referees and county commissioners.

In what cases, depositions may be used.
1821, 85, § 1.

SECT. 2. Any justice of the peace, and any notary public, may take depositions; to be used in any pending cause, he not being interested in such cause, nor being, nor having been, counsel or attorney in the same.

Before whom they may be taken.
1821, 85, § 1.
13 Pick. 279,
441.
14 Pick. 285.

SECT. 3. No suit, petition, libel or prosecution shall, for the purposes of this chapter, be considered as pending, till the writ, petition, libel or other process shall have been duly served upon the respondent, or such notice, as is required by law, or ordered by the court, shall have been duly given; and no deposition, taken as aforesaid, shall be used in the trial of any such cause, except by consent of parties, unless the notice, hereinafter mentioned, shall have been duly given to the adverse party.

When a cause is deemed pending, for the purpose.
1821, 85, § 1.
16 Maine, 257.
22 Pick. 309.

SECT. 4. Depositions to be used in pending actions, may be taken for either of the following causes, viz:

Reasons, for which they may be taken and used.
1821, 85, § 1.

First. When the deponent is so aged, infirm or sick, as not to be able to attend the court, or at other place of trial;

Second. When the defendant resides out of, or is absent from the state;

Third. When the deponent shall be bound to sea on a voyage, or is about to go out of the state by sea or land, before the session of the court, where the deposition is to be used, and not expected to return in season to attend the trial;

Fourth. When the deponent lives more than thirty miles, from the place of trial;

Fifth. When the deponent is confined in prison, and such imprisonment shall be continued, until after trial of the cause.

SECT. 5. On application of either party to a justice of the peace, or notary public, for the purpose of procuring the deposition of a witness, such justice or notary may issue a summons to the deponent, to appear before him at a designated place and time to give his deposition; and also issue notice to the adverse party, to be present at such time and place, if he should see fit; or such notice to the adverse party may be made returnable before any other justice of the peace or notary, who shall be named in such notice, as the person who is to take the deposition.

Summons to the deponent, and citation to the adverse party.
1821, 85, § 2, 4.

SECT. 6. The notification to the adverse party shall be served on him or his attorney, by reading the same in his presence and hearing, or by giving to him, or leaving at his last and usual place of abode, an attested copy thereof; and the service may be made by a sworn officer, or by any other person, and proved by his affidavit.

Service of such citation.
1821, 85, § 2.

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Who is to be considered attorney of the adverse party. 1821, 85, § 2.

Notice to one of the adverse party, sufficient. 1821, 85, § 2.

Time of notice. 1821, 85, § 2. 8 Greenl. 326. 16 Maine, 41.

Verbal notice, by the justice or notary.

1821, 85, § 2.

Form of citation to the adverse party.

1821, 85, § 2. 15 Mass. 492.

Form of summons to deponent. 1821, 85, § 4.

Witness may be compelled to give his deposition. 1821, 85, § 4.

SECT. 7. No person shall, for the purposes of this chapter, be considered the attorney of another, unless he has indorsed the writ, or indorsed his name on the summons left with the defendant, or appeared for his principal in the cause, or given notice in writing that he is attorney of such adverse party.

SECT. 8. Where there are several plaintiffs or defendants, notice may be given, by the said justice or notary, to one or more of them; and that shall be deemed sufficient.

SECT. 9. No written notice, as aforesaid, shall be valid, unless the adverse party be allowed between the service of the notice, and time appointed for taking the deposition, time for him to travel from his usual place of abode to the place of trial, not less than at the rate of one day for every twenty miles' travel, exclusive of Lord's days.

SECT. 10. Any justice of the peace or notary may give verbal notice to the adverse party; and that shall be deemed sufficient.

SECT. 11. The notice to the adverse party, if in the state, shall be in substance as follows:

"_____, ss. To _____, of _____, in the county of _____.

Greeting.

Whereas A. B. of _____, has requested, that the deposition of C. D. of _____, may be taken to be used in an action of _____, pending between you and the said A. B.; and the _____ of _____, in _____, and the _____ day of _____, at _____ of the clock in _____-noon, are the time and place appointed, for said deponent to testify what he knows relating to said action; you are hereby notified that you may be present, and put such questions, as you may think fit. Dated this _____ day of _____, 18____.

_____, Justice of the Peace."

SECT. 12. The justice of the peace or notary public shall, when requested, also issue a summons to the deponent, in substance as follows, viz:

"_____, ss. To C. D. of _____, in the county of _____,

Greeting.

Whereas A. B. of _____, in the county of _____, has requested me to take your deposition, to be used in an action, now pending between him and E. F. of _____, in the county of _____; and the _____ of _____, in the town of _____, and the _____ day of _____, at _____ of the clock in the _____-noon, are the time and place, appointed for taking the same deposition, you are therefore required in the name of the state of Maine, then and there to appear to testify what you know, relating to said action. Dated this _____ of _____ in the year _____.

_____, Justice of the peace."

which summons may be served, and the service thereof proved, as described in the case of said notification.

SECT. 13. Any witness may be compelled to attend and give his deposition, in like manner, and under the same penalties, as he may be summoned and compelled to attend, as a witness in court, without regard to the distance of his place of abode from the place of trial; but not to travel more than thirty miles for the purpose of giving his deposition; and such deposition shall not be used in

any trial, excepting for the causes mentioned in the fourth section, unless the adverse party shall use the witness at such trial.

SECT. 14. When any deposition shall be taken, out of the state, and not under a commission, the adverse party or his attorney shall be duly notified to attend.

SECT. 15. The deponent shall be first sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken; and he shall then be examined, first by the party producing him, on verbal or written interrogatories, and then by the adverse party, and by the justice, or the parties afterwards, if they see cause.

SECT. 16. The deposition shall be written by the justice or notary, or by the deponent or by some disinterested person in the presence and under the direction of such justice or notary; and after the same has been carefully read to, or by the deponent, shall then be subscribed by him.

SECT. 17. The justice or notary shall then make out a certificate, and annex the same to the deposition, therein stating the following facts;

First. That the deponent was sworn according to law, and when;

Second. By whom the deposition was written;

Third. If it was written by the deponent or some disinterested person, he must name him, and that he wrote it in the presence and under the direction of the justice or notary;

Fourth. Whether the adverse party was notified to attend;

Fifth. Whether he attended or not;

Sixth. The cause in which the deposition is to be used, and the names of the parties thereto;

Seventh. The court or tribunal, in which it is to be tried;

Eighth. The place and time of trial;

Ninth. The cause of taking the deposition.

SECT. 18. The deposition shall be delivered by the justice to the court or referees, before whom the cause is to be tried, or be enclosed and sealed up by him, and directed to such court or referees, and be kept sealed, till opened by their order.

SECT. 19. When a deposition has been so taken, it shall not be used on trial of the cause, if the adverse party shall then make it appear, that the cause for taking such deposition no longer exists, but that the deponent is within thirty miles of the place of trial and able to attend the trial in person.

SECT. 20. Objections to the competency of a deponent, or the propriety of any questions proposed to him, or answers given by him; may be made when the deposition is produced, in the same manner, as if the witness were personally examined on the trial; but, when any deposition is taken on written interrogatories, all objections to any interrogatory shall be made before it is answered; and, if the interrogatory be not withdrawn, the objection shall be noted thereon; or otherwise the objection shall not afterwards be allowed.

SECT. 21. When a plaintiff shall become nonsuit, or discontinue a suit, and shall commence another action for the same cause, and

How depositions may be taken, out of the state.

1821, 85, § 6.

Deponent to be sworn, before examination.

1821, 85, § 3.

Who may write the deposition.

1821, 85, § 3.

Form of caption.

1821, 85, § 3.

Deposition to be delivered in court, or sealed up.

1821, 85, § 3.

Not to be used, if the reason for taking it no longer exists.

1821, 85, § 5.

Objections to competency of witness, or to questions proposed, when to be made.

When depositions may be used in a second suit.

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between the same parties or their representatives, all depositions lawfully taken for the first suit, of the taking of which the adverse party had due notice, may be used in the second suit; provided, they have been duly filed in the court where the first cause was pending, and have remained on file from the time the first suit was discontinued, until the commencement of the second.

When depositions may be used, taken out of the state. 1821, 85, § 6. 3 Pick. 14.

Commissions to take depositions, out of the state. 1821, 85, § 7. 18 Pick. 53, 355. 22 Pick. 309.

Witnesses may be compelled to give depositions, in cases of contested elections. 1825, 310.

Application for taking a deposition in perpetuam. 4 Greenl. 483. 3 Pick. 14, 74.

Notice to persons interested. 1821, 85, § 8. 4 Greenl. 88.

Deposition, how taken, and certificate thereon. 1821, 85, § 8. 16 Maine, 255.

To be recorded. 1821, 85, § 8.

When it may be used in evidence. 1821, 85, § 8. 1823, 211. 11 Mass. 229. 16 Mass. 393. 4 Greenl. 88.

SECT. 22. Depositions, taken out of the state, by a justice of the peace or notary public, or other person lawfully empowered to take depositions, may be admitted or rejected by the court, at their discretion.

SECT. 23. The justices of the supreme judicial court, and of the district court, may issue commissions to take depositions, without the state, to be used in pending suits in the state, on such terms and conditions as they may from time to time prescribe.

SECT. 24. In case of the contested election of a person returned as a member of the house of representatives, either party may summon any witness before a justice to give his deposition, and he shall be subject to like penalties and liabilities, in case of disobedience, as are mentioned in the thirteenth section of this chapter.

SECT. 25. When any person wishes to perpetuate the testimony of any witness, he shall make a statement in writing, under oath, briefly setting forth, in substance, his title, interest or claim in, or to the subject, to which the desired testimony relates, and the names of all persons, who are supposed interested therein, and also the name of each witness proposed to be examined; and shall deliver the statement to any judge or register of probate, notary public, or clerk of the supreme judicial court or justice of the peace and quorum, requesting the person selected to take the deposition of such witness.

SECT. 26. The person, so selected for the purpose, shall cause notice to be given of the time and place of taking such deposition to all the persons, named in the statement, as interested; which may be given and proved in like manner, as in case of taking depositions in pending actions.

SECT. 27. The deponent shall be sworn and examined, and the deposition be written, read and subscribed in the same manner, as depositions taken to be used in pending actions; and the person taking such deposition, shall annex to it a certificate, under his hand, at the time of taking it; and, that it was taken in perpetual remembrance of the thing; and shall insert therein the name of the person, at whose request it was taken, and of all those who were notified to attend and did attend.

SECT. 28. The said statement, deposition and certificate shall, within ninety days after taking the same, be recorded in the registry of deeds in the county, where the land or any part of it lies, if the deposition relates to real estate; and if not, then in the county where the parties or some of them reside.

SECT. 29. All depositions taken to perpetuate the testimony of witnesses, being recorded as mentioned in the preceding section, or a copy thereof, attested by the register of deeds, may be used in the trial of any cause, whether pending at the time the deposition was taken, or commenced afterwards, between the person at whose

request it was taken, and either of the persons named in the statement, and duly notified, or those claiming under either, concerning the title, claim or interest, set forth in the statement; subject to the same objections; as if it had been originally taken for the suit.

SECT. 30. Depositions to perpetuate the testimony of witnesses, living out of the state, may be taken in any other state, or in any foreign country upon a commission to be issued by the supreme judicial court or district court, in the manner hereinafter provided.

Such depositions may be taken out of the state.

SECT. 31. The person, desirous to procure such depositions, may apply to either of said courts, and file a statement of the kind described in the twenty fifth section of this chapter; and, if the subject of the deposition relates to real estate in this state; such statement shall be filed in the county or counties, where the same lies; and, if not, then in the county, where some of the parties reside.

Application to the court, for a commission therefor.

SECT. 32. The court shall order notice to be served on each of the persons named in said statement, and living in the state, fourteen days before the time appointed for hearing the parties.

Notice to persons interested.

SECT. 33. The court, on hearing the parties, or the applicant, if no adverse party appears, may issue a commission, if they see cause, for taking such deposition, in like manner as in a cause pending.

Court may issue a commission.

SECT. 34. The deposition shall be taken upon interrogatories, filed by the applicant, and cross interrogatories, by any party adversely interested, substantially in the same manner, as when taken to be used in pending causes.

Deposition to be taken upon interrogatories.

SECT. 35. Or the person wishing to take the deposition may file his statement in the clerk's office in vacation, and cause notice to be given to the persons named therein as interested, fourteen days at least before the next term of the court, at which time the parties may be heard.

Application may be filed in vacation, and notice given.

SECT. 36. Whenever any judge or register of probate, notary public, or clerk of the supreme judicial court, or any justice of the peace and of the quorum, shall have summoned any person to appear before him, to give his deposition to be used in any cause, pending in any court, in this or in any other state, or to give his deposition, to perpetuate the testimony of any witness, and such summons shall have been served and returned by a sheriff, deputy sheriff or constable, or in the manner prescribed in the sixth and twelfth sections of this chapter, and proof of such service is entered on such summons, and legal fees shall have been tendered to such witness, a reasonable time before the day appointed for taking his deposition, and such witness shall refuse to attend, such judge, register, notary, clerk or justice, may adjourn the time of taking such deposition to a future hour or day, as may be convenient, and issue a *capias*, directed to a proper officer, to apprehend such witness and bring him before such judge, register, notary, clerk or justice, at the time and place to which such adjournment was ordered.

Proceedings, to compel a deponent to appear, to give his deposition. 1833, 85, § 1.

SECT. 37. If such witness, being so brought before such judge, register, notary public, clerk or justice, shall refuse to depose and answer such questions, as may be propounded to him by either of

Punishment, if he refuse to depose. 1833, 85, § 2.

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Certain depositions may affirm.
1821, 85, § 9.

SECT. 38. Any person, conscientiously scrupulous of taking an oath, when lawfully required, may make his affirmation under the pains and penalties of perjury; and the same shall be deemed to have the same force and effect, as his oath would have, on the same occasion.

If a false deposition be given, it is to be deemed perjury.
1821, 85, § 10.

SECT. 39. Any person, wilfully, falsely, and corruptly swearing or affirming, in giving or making any deposition or affidavit required in this chapter, shall incur the same penalties, as if the testimony had been given in open court, and wilful perjury committed in giving the same.

Witnesses may be summoned into another state to testify in criminal cases.
1839, 382.

SECT. 40. When a clerk of a judicial court, in any other state, shall certify, officially in writing, that, there is pending in such court a criminal cause, and that a person in this state is supposed to be a material witness, in the cause for the state, or the accused, any justice of the peace, when applied to, shall, on the back of such certificate, issue a summons, requiring such witness to appear and testify at such court, and, if any such person, so summoned, and having tendered to him a sum equal to twenty cents per mile, from the abode of the witness to the court, and two dollars at the end of every day for his attendance, and having no reasonable excuse, shall neglect so to appear and testify as aforesaid, he shall forfeit and pay three hundred dollars to him, who shall sue for the same in this state, in an action of debt; but no such witness shall be bound to go more than five hundred miles, for such purpose.

Mortgagee to disclose the amount due on the mortgage, to an attaching creditor of the mortgagee.
1834, 126, § 1.

SECT. 41. Whenever a creditor has, or shall have attached, on mesne process, the right in equity which the defendant has, or shall have, of redeeming any real estate mortgaged, and shall have recovered judgment and execution against such debtor, and is desirous of having such right sold on execution according to law, he may demand of the mortgagee, or person claiming under him, a disclosure, in writing under his hand, of the sum then due and secured by such mortgage, together with the condition of such mortgage.

Same subject.
1834, 126, § 1.

SECT. 42. It shall be the duty of such mortgagee, or person claiming under him, within twenty four hours of such demand, to furnish such statement to the creditor, and be liable for all damages occasioned by a neglect so to furnish the same.

May he compelled to give his deposition.
1834, 126, § 2, 3.

SECT. 43. The creditor may, after the expiration of said twenty four hours, if such disclosure is not furnished as aforesaid, apply to such judge, register, notary, clerk or justice of the peace and quorum of the county, in which such mortgagee, or person claiming under him, resides; and such magistrate shall, thereupon, proceed to take the deposition of such person, in relation to the facts required to be given to him by the statement aforesaid, for perpetuating the testimony of such person, and the knowledge of the facts testified; and such judge, register, clerk, notary or justice, may make use of all such power, to compel a disclosure of the facts demanded in such statement, as is mentioned in the thirty seventh section of this chapter.

SECT. 44. No person shall be deemed an incompetent witness, by reason of having committed any crime, unless he has been convicted thereof in this state; but the conviction of any person, in any court without the state, of a crime, of which, if he had been convicted in this state, it would render him an incompetent witness, may be given in evidence to affect his credibility.

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Who are competent witnesses.

SECT. 45. The records and proceedings of any court of another state, or of the United States, shall be admissible in evidence in all cases in this state, when authenticated by the attestation of the clerk, prothonotary or other officer, having charge of the record of such court, with the seal of such court annexed.

How records of courts of other states are to be authenticated. 4 Greenl. 124.

SECT. 46. The printed copies of all statutes, acts and resolves of this state, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof, in all courts, and on all occasions whatever.

Printed copies of Maine statutes, when proof. 1821, 59, § 33.

SECT. 47. The printed copies of statutes of any other of the United States, or of the territories thereof, if purporting to be published under authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all our courts of law, and on all occasions, as prima facie evidence of such laws.

Printed copies of statutes of other states, how far evidence.

SECT. 48. The unwritten law of any other of the United States or of the territories thereof, may be proved as facts by parol evidence, and the books of reports of cases, adjudged in their courts, may also be admitted in evidence of such law.

Unwritten law of other states, how proved.

SECT. 49. The existence and tenor or effect of all foreign laws may be proved, as facts, by parol evidence; but, if it shall appear, that the law in question is contained in a written statute or code, the court may, in their discretion, reject any evidence of such law, that is not accompanied by a copy thereof.

Laws of foreign countries, how proved. 14 Mass. 455.

SECT. 50. No person shall be obliged to attend as a witness, unless the fees are paid or tendered to him, which are allowed by law for one day's attendance, and travel to and from the place of attendance.

Fees to be tendered to witnesses. 1821, 59, § 38.

SECT. 51. Any person, obliged to attend, who shall fail so to attend, without reasonable cause, shall be liable to payment of all damages thereby occasioned to the aggrieved party; and such failure shall be considered a contempt of court; and may be punished as such, by a fine not exceeding twenty dollars.

Penalty for non attendance. 1821, 59, § 38.

SECT. 52. The usual mode of administering oaths now in practice, with the ceremony of holding up the hand, shall be observed; unless the court or magistrate shall be satisfied, that such person has any peculiar mode of swearing, which he may deem more solemn.

Manner of administering oaths. 1821, 59, § 29.

SECT. 53. Every person, believing in any other than the christian religion, may be sworn according to the peculiar ceremonies of his religion.

Same subject. 1821, 59, § 29.

SECT. 54. No person, convicted by any court of law in this state, of any infamous crime, and sentenced according to law upon any such conviction, shall be admitted as a competent witness in the trial of any civil or criminal cause, unless his competency shall have been restored by a pardon.

Persons convicted of certain crimes, incompetent witnesses.