

# 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)

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

---

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

---

BANGOR:  
WHEELER & LYNDE.

---

1857.

ones of the same persons, the minutes of the drafts made within the three preceding years. **CHAP. 106.**

SEC. 16. If the municipal officers or town clerk neglect to perform their duties herein required, so that the jurors called for from their town are not returned, they shall be fined not less than ten, nor more than fifty dollars each. R. S., c. 135, § 20.  
Penalty for neglect of officers.  
R. S., c. 135, § 21.

SEC. 17. Any constable, neglecting to perform his duties herein required, shall be fined not exceeding twenty dollars; and any town for a like neglect of its duties shall be fined not exceeding one hundred dollars. Penalty for neglect of constable or town.  
R. S., c. 135, § 22, 23.

SEC. 18. If the clerk of the court, or sheriff, neglects to perform his duties so as to prevent a compliance with any of the provisions of this chapter, he shall be fined not exceeding fifty dollars. Penalty for neglect of clerk or sheriff.  
R. S., c. 135, § 24.

SEC. 19. Any juror, who, after being notified and returned, unnecessarily fails in his attendance, shall be fined as for contempt, not exceeding twenty dollars, unless he resides in Portland, and then not exceeding forty dollars. Penalty for neglect of juror to attend.  
R. S., c. 135, § 25, 26.

SEC. 20. Any town clerk or municipal officer, who commits a fraud on the box previous to the draft, in drawing a juror or in returning a name into the box, which had been fairly drawn and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars, half to the use of the state and half to the prosecutor. Penalty for fraud by town officers.  
R. S., c. 135, § 27, 29.

SEC. 21. All fines imposed by sections sixteen, seventeen, eighteen and nineteen, shall be recovered by indictment, information, or action by the county treasurer to the use of the county where the offence is committed. Recovery and appropriation of fines.  
R. S., c. 135, § 28.

---

## CHAPTER 107.

### DEPOSITIONS.

#### DEPOSITIONS IN GENERAL.

- SEC. 1. In what cases depositions may be used.
2. Before whom they may be taken.
3. When a cause is deemed pending, for the purpose of taking depositions.
4. Reasons for which they may be taken and used.
5. On application of the party, a justice or notary may issue summons to deponent, and notice to adverse party.
6. Service of such notice, how made.
7. Who is to be considered attorney of the adverse party.
8. Notice to one of the adverse party sufficient; time of notice; verbal notice by the justice or notary; due notice to be given when deposition is taken out of the state.
9. Form of notice to adverse party.
10. Form of summons to deponent.
11. Witness may be compelled to give his deposition.
12. Deponent to be sworn before examination.
13. Who may write the deposition.
14. If deception is used in giving notice, deposition may be rejected. No deposition to be closed until one hour after time appointed for the taking.

## CHAP. 107.

## SEC. 15. Form of caption.

16. Depositions to be delivered in court, or sealed up and directed.
17. Not to be used if the reason for taking no longer exists.
18. Objections to competency of witness or questions must be seasonably made.
19. When depositions may be used in a second suit.
20. The court may admit or reject depositions taken out of the state.
21. The court may issue commissions to take depositions out of the state.

## DEPOSITIONS IN PERPETUAM.

22. Application for taking a deposition in perpetuum, and notice to persons interested.
23. How such depositions are to be taken and certified.
24. To be recorded.
25. When it may be used in evidence. Never against the deponent or his interest.
26. Such depositions may be taken out of the state, upon a commission issued from the supreme judicial court.
27. The court to order notice, and on hearing may issue a commission to take such depositions.
28. Such deposition to be taken upon interrogations; application may be filed in vacation, and notice given.

## PENALTY FOR REFUSING TO APPEAR, OR TO GIVE DEPOSITIONS.

29. Proceedings to compel a deponent to appear to give his deposition. Punishment if he refuses to depose.

## DEPOSITIONS IN GENERAL.

In what cases depositions may be used.  
R. S., c. 133,  
§ 1, 24.

SEC. 1. Depositions taken for 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; and in cases of the contested election of a person returned as a member of the house of representatives.

Before whom taken.  
25 Maine, 436.  
R. S., c. 133,  
§ 2.

SEC. 2. A justice of the peace or notary public may take depositions to be used in a pending cause, in which he is not interested, nor then nor previously counsel or attorney.

When a cause is deemed pending, &c.  
15 Maine, 447.  
16 Maine, 257.  
37 Maine, 411.  
R. S., c. 133,  
§ 3.

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

Reasons for which they may be taken and used.  
21 Maine, 211.  
R. S., c. 133,  
§ 4.  
1842, c. 31, § 16.  
1842, c. 1, § 1.

SEC. 4. Depositions may be taken for either of the following causes.

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

*Second.*—When the deponent resides out of, or is absent from the state.

*Third.*—When the deponent, before the session of the court where the deposition is to be used, is bound to sea on a voyage, is about to go out of the state, or more than sixty miles from the place of trial, and not expected to return in season to attend it.

*Fourth.*—When the deponent is judge of the supreme judicial court, or court of probate, and is prevented by his official duty from attending the trial.

CHAP. 107.  
1844, c. 103, § 1.

*Fifth.*—When the deponent resides in a town other than that in which the trial is to be had.

1849, c. 123, § 1.

*Sixth.*—When the deponent is confined in prison, and such imprisonment is continued until after the trial.

R. S., c. 133,  
§ 4.

SEC. 5. On application of either party to a justice of the peace or notary public, he may issue a summons to the deponent to appear at a designated time and place, to give his deposition, and a notice to the adverse party to be then and there present; and the deposition may then and there be taken by him or any other justice or notary.

On application  
of the party,  
&c.  
R. S., c. 133,  
§ 5.  
1849, c. 119, § 1.

SEC. 6. The notice to the adverse party shall be served on him or his attorney by reading it in his presence and hearing, or by giving to him, or leaving at his place of last and usual 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  
notice, how  
made.  
R. S., c. 133,  
§ 6.

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

Who is to be  
considered  
attorney of the  
adverse party.  
R. S., c. 133,  
§ 7.

SEC. 8. Where there are several plaintiffs or defendants, the notice shall be sufficient if given by the justice or notary to one or more of them; the adverse party shall be allowed not less than at the rate of one day, Sundays excepted, for every twenty miles travel from his usual place of abode to the place of caption, between the service of notice and time appointed for taking the deposition. Verbal notice to the adverse party by a justice or notary shall be sufficient; and when a deposition is taken out of the state, and not under a commission, the adverse party or his attorney shall have due notice thereof.

Notice to one  
of the adverse  
party suffi-  
cient, &c.  
16 Maine, 41.  
36 Maine, 278.  
R. S., c. 133,  
§ 8, 9, 10, 14.  
1842, c. 31, § 17.

SEC. 9. The notice to the adverse party, if in the state, shall be in substance as follows:—

Form of notice  
to adverse  
party.  
22 Maine, 357.  
R. S., c. 133,  
§ 11.

\_\_\_\_\_, 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 place and time appointed therefor; you are hereby notified to be present and put such questions as you think fit. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Justice of the Peace.

SEC. 10. The justice or notary, when requested, shall issue a summons to the deponent in substance as follows, viz.:—

Form of sum-  
mons to depo-  
nent.

(a) 29 Maine, 69; 33 Maine, 420; 36 Maine, 350.

CHAP. 107. \_\_\_\_\_, ss. To C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_.

R. S., c. 133,  
§ 12.

Greeting.

Whereas A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, has requested that your deposition be taken, 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 place and time appointed therefor; you are therefore required, in the name of the State of Maine, there and then to appear and testify what you know relating to said action. Dated this \_\_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_.

\_\_\_\_\_ , Justice of the Peace.

The summons may be served and the service thereof proved as in section six.

Witness may  
be compelled  
to give deposition.

R. S., c. 133,  
§ 13.

SEC. 11. A witness may be compelled to attend and give his deposition in like manner and under the same penalties as a witness is compelled to attend and testify in court; but not to travel more than thirty miles to give his deposition; and such deposition shall not be used in any trial, except for the causes mentioned in the fourth section, unless the adverse party uses the witness at such trial.

Deponent to  
be sworn.

R. S., c. 133,  
§ 15.

SEC. 12. 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. (a)

Who may  
write the depo-  
sition.

R. S., c. 133,  
§ 16.

SEC. 13. The deposition shall be written by the justice or notary, or by the deponent or some disinterested person, in the presence and under the direction of such justice or notary; and after it has been carefully read to or by the deponent, it shall be subscribed by him.

If deception is  
used, &c.

SEC. 14. If the adverse party is notified to take depositions in the same cause at two places at the same time, or any deceptive means are used to prevent his attendance at the taking of any depositions, the court for such reason may reject them; and no deposition shall be closed till the expiration of one hour after the time appointed for the taking.

Form of cap-  
tion.

R. S., c. 133,  
§ 17.

SEC. 15. The justice or notary shall make out a certificate and annex it to the deposition, therein stating the following facts: (b)

*First.*—That the deponent was first sworn according to law, and when.

*Second.*—By whom the deposition was written; if by the deponent or some disinterested person, he must name him, and that it was written in his presence and under his direction.

*Third.*—Whether the adverse party was notified to attend, and did or did not attend.

(a) 24 Maine, 171; 34 Maine, 69; 35 Maine, 132, 368, 511; 38 Maine, 137.

(b) 5 Maine, 9; 28 Maine, 22; 31 Maine, 583; 33 Maine, 376; 34 Maine, 208; 38 Maine, 71, 466.

*Fourth.*—The cause in which the deposition is to be used and the names of the parties thereto.

*Fifth.*—The court or tribunal in which it is to be tried, and the time and place of trial.

*Sixth.*—The cause of taking the deposition.

SEC. 16. The deposition shall be delivered by the justice to the court or referees before whom the cause is to be tried, or inclosed and sealed up by him, and directed to such court or referees, and kept sealed till opened by their order.

Deposition to be delivered, &c.  
R. S., c. 133, § 18.

SEC. 17. When a deposition is so taken, it shall not be used on trial, if the adverse party shows that the cause for taking it no longer exists. (*a*)

Not to be used, &c.  
R. S., c. 133, § 19.

SEC. 18. Objections to the competency of a deponent, or to the questions or answers, may be made when the deposition is produced, as if the witness testified on the trial; but if a deposition is taken on written interrogatories, all objection to an interrogatory shall be made before it is answered; and if it is not withdrawn, it shall be noted thereon, otherwise it shall not afterwards be allowed.

Objections to competency, &c.  
14 Maine, 141.  
37 Maine, 208.  
R. S., c. 133, § 20.

SEC. 19. When a plaintiff becomes nonsuit, or discontinues his suit and commences another for the same cause, between the same parties or their representatives, all depositions lawfully taken for the first may be used in the second suit, if they were duly filed in the court where the first suit was pending, and remained on file till the commencement of the second.

When depositions may be used in a second suit.  
R. S., c. 133, § 21.

SEC. 20. The court may admit or reject depositions taken out of the state by a justice, notary, or other person lawfully empowered to take them. (*b*)

Court may admit or reject, &c.  
R. S., c. 133, § 22.

SEC. 21. The justices of the supreme judicial 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 think proper.

The court may issue commissions to take depositions out of the state.  
R. S., c. 133, § 23.

#### DEPOSITIONS IN PERPETUAM.

SEC. 22. When any person wishes to perpetuate the testimony of a witness, he shall make a statement in writing under oath, briefly setting forth in substance his title, interest, or claim in the subject to which the desired testimony relates, and the names of all persons supposed to be interested therein, and the name of each witness proposed to be examined; and shall deliver the statement to a judge or register of probate, notary public, clerk of the supreme judicial court, or justice of the peace and quorum, requesting him to take the deposition of such witness; and he shall thereupon cause notice to be given, of the time and place for taking such deposition, to all persons so named in the statement, which may be given and proved as in case of other depositions.

Application for taking a deposition in perpetuum, &c.  
4 Greenl. 88, 483.  
17 Maine, 353.  
R. S., c. 133, § 25, 26.

SEC. 23. The deponent shall be sworn and examined, and the deposition written, read, and subscribed, as other depositions.

How such depositions are to be taken and certified.

(*a*) 20 Maine, 257; 28 Maine, 38.

(*b*) 29 Maine, 164; 31 Maine, 503; 32 Maine, 179.

## CHAP. 107.

16 Maine, 255.  
R. S., c. 133,  
§ 27.

To be re-  
corded.

19 Maine, 151.  
R. S., c. 133,  
§ 28.

When it may  
be used in  
evidence, &c.  
R. S., c. 133,  
§ 29.  
1852, c. 242, § 1.

Such deposi-  
tions may be  
taken out of  
the state, &c.  
R. S., c. 133,  
§ 30, 31.

The court to  
order notice,  
&c.  
R. S., c. 133,  
§ 32, 33.

Such deposi-  
tion to be tak-  
en upon inter-  
rogatories, &c.  
R. S., c. 133,  
§ 34, 35.

Proceedings to  
compel a depo-  
nent to appear,  
&c.  
22 Maine, 357.

tions; and the person taking it shall annex to it a like certificate, as near as the case will admit, and also state therein that it was taken in perpetual remembrance of the thing, and the name of the person at whose request it was taken, and of all who were notified, and all who attended.

SEC. 24. The statement, deposition, and certificate, within ninety days after the taking, shall 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; if not, in the county where the parties or some of them reside.

SEC. 25. All such depositions, recorded as aforesaid, or a copy thereof attested by the register of deeds, may be used in the trial of any cause pending when 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 originally taken for the suit; but no statement or testimony in any such deposition shall be received as evidence in any case against the deponent or his interest, or any one claiming under him.

SEC. 26. Depositions, to perpetuate the testimony of witnesses living out of the state, may be taken in any other state, or foreign country, upon a commission issued by the supreme judicial court; and the persons desirous to procure such depositions may apply to said court and file a statement as aforesaid; and if it relates to real estate in this state, the statement shall be filed in the county where it lies; if not, in the county where some of the parties reside.

SEC. 27. The court shall order notice to be served on each of the persons named in the statement living in the state, fourteen days before the time appointed for hearing the parties, and on hearing the parties, or the applicant, if no adverse party appears, may issue a commission for taking such deposition as in a cause pending.

SEC. 28. The deposition shall be taken on interrogatories filed by the applicant, and cross interrogatories by any party adversely interested, substantially as when taken to be used in pending causes. 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.

## PENALTY FOR REFUSING TO APPEAR OR TO GIVE DEPOSITIONS.

SEC. 29. When any magistrate, duly authorized, has summoned a person to appear before him to give his deposition, to be used in any cause pending in any court in this or any other state, or to perpetuate his testimony; the summons has been served and returned by a proper officer or other person, and proof thereof is entered on the summons; legal fees have been tendered him a reasonable time before the day appointed for taking



the deposition; and he refuses to attend, the magistrate may adjourn the time of taking his deposition, and issue a *capias*, directed to a proper officer, to apprehend and bring him before him at the time and place of the adjournment; and if, on being brought before the magistrate who is to take his deposition, he refuses to depose and answer such questions as are propounded to him by either of the parties or persons interested, under his direction, he may commit him to the prison of the county for contempt, as the supreme judicial court may commit a witness for refusing to testify.

CHAP. 107.

Punishment if he refuses.

R. S., c. 133, § 36, 37.

## CHAPTER 108.

### REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

- SEC. 1. What controversies may be submitted; manner and form of submission; not to be revoked but by consent.
2. Submission of all demands, and of a specific demand.
  3. Parties may agree upon the time of reporting.
  4. Report, how returned into court.
  5. Power of referees same as if appointed under rule of court.
  6. Proceedings of court thereon; recommitment.
  7. All the referees must hear, but a majority may decide.
  8. Costs; compensation of referees.
  9. Report to be made to the supreme judicial court; either party may bring writ of error or file exceptions.
  10. A referee may take acknowledgment, or administer oaths.

SEC. 1. All controversies, which may be the subject of a personal action, may be submitted to one or more referees; and the parties personally, or by attorney, may sign and acknowledge an agreement before a justice of the peace, in substance as follows:

Know all men by these presents, that \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, have agreed to submit the demand made by said \_\_\_\_\_, against said \_\_\_\_\_, which is hereunto annexed, (and all other demands between the parties, as the case may be,) to the determination of \_\_\_\_\_; and judgment rendered on their report, or that of a majority of them, made to the supreme judicial court for the county of \_\_\_\_\_, within one year from this day, shall be final. And if either party neglects to appear before the referees, after proper notice given to him of the time and place appointed by the referees for hearing the parties, the referees may proceed in his absence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

Such agreement, subscribed by the parties, shall be acknowledged by them or their attorneys as their voluntary act, before the same or any other justice, and shall not be revoked without the mutual consent of the parties.

What controversies may be submitted, &c.

5 Greenl. 38.  
13 Maine, 41.  
13 Maine, 251,  
255.

22 Maine, 240.  
32 Maine, 78.  
34 Maine, 161.  
36 Maine, 593.  
R. S., c. 133,  
§ 1, 2, 5.