

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



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CHAP. 107.**CHAPTER 107.**

DEPOSITIONS.

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DEPOSITIONS IN GENERAL.

CHAP. 107.

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 contested senatorial or representative election. Depositions or affidavits may also be taken in application for pensions, bounties, or arrears of pay, under any law of the United States.

In what cases depositions may be used.
R. S. c. 107, § 1.
1864, c. 286,
§§ 1, 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.

Before whom taken.
R. S. c. 107, § 2.
25 Me. 436.

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.

When a cause is deemed pending, for purpose of taking depositions.
R. S. c. 107, § 3.
15 Me. 447.
16 Me. 257.
37 Me. 411.

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

Reasons for which they may be taken and used.
R. S. c. 107, § 4.
1864, c. 286, § 2.
21 Me. 211.
53 Me. 179.

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.

Fifth.—When the deponent resides in a town other than that in which the trial is to be had; and also when he resides in the same town; but in the latter case, the deposition shall not be used, unless, at the trial, the party offering it shows the deponent's death or permanent removal from that town.

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

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, justice or notary may issue summons to deponent and notice to party.
R. S. c. 107, § 5.
41 Me. 594.

CHAP. 107.

Service of notice how made. R. S. c. 107, § 6. 37 Me. 411.

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.

Who to be considered attorney of the adverse party. R. S. c. 107, § 7.

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)

Notice to one of adverse party sufficient; time of notice; when verbal notice may be given. Notice to take deposition out of state. R. S. c. 107, § 8. 16 Me. 41. 36 Me. 278.

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.

Form of notice to adverse party. R. S. c. 107, § 9. 22 Me. 357.

SEC. 9. 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 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.

Form of summons to deponent. R. S. c. 107, § 10.

SEC. 10. The justice or notary, when requested, shall 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 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

(a) 29 Me. 69; 33 Me. 420; 36 Me. 350; 52 Me. 479.

what you know relating to said action. Dated this ——— of CHAP. 107.
———, in the year ———.

———, Justice of the Peace.

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

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.

Witness may be compelled to give deposition.
R. S. c. 107, § 11.
36 Me. 278.

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)

How deponent to be sworn and examined.
R. S. c. 107, § 12.

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.

Who may write the deposition.
R. S. c. 107, § 13.

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.

If deception is used in taking, may be rejected. When it may be closed.
R. S. c. 107, § 14.

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

Form and requisites of caption.
R. S. c. 107, § 15.

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.

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

Deposition to be delivered in court or sealed up and directed.
R. S. c. 107, § 16.

(a) 24 Me. 171; 34 Me. 69; 35 Me. 132, 368, 511; 38 Me. 137; 44 Me. 72.
(b) 5 Me. 9; 28 Me. 23; 31 Me. 583; 33 Me. 376; 34 Me. 69, 208; 36 Me. 71, 278, 466; 38 Me. 22, 137; 41 Me. 332; 44 Me. 72; 45 Me. 461.

CHAP. 107. sealed up by him, and directed to such court or referees, and kept sealed till opened by their order.

Not to be used if cause no longer exists. R. S. c. 107, § 17.

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)

Objections to competency, when made. R. S. c. 107, § 18. 14 Me. 141. 37 Me. 208. 45 Me. 461. 47 Me. 248.

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.

When depositions may be used in second suit. R. S. c. 107, § 19. 55 Me. 165.

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.

Court may admit or reject depositions taken out of the state. R. S. c. 107, § 20.

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)

The court may issue commissions to take depositions out of the state. R. S. c. 107, § 21. 32 Me. 179.

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.

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DEPOSITIONS IN PERPETUAM.

Application for taking a deposition in perpetuam, and notice to persons interested. R. S. c. 107, § 22. 4 Me. 88, 483. 17 Me. 353.

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.

How such depositions are to be taken and certified. R. S. c. 107, § 23. 16 Me. 255.

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

(a) 20 Me. 257; 28 Me. 38.

(b) 29 Me. 164; 31 Me. 503; 32 Me. 179; 41 Me. 105; 50 Me. 409; 52 Me. 479.

membrance 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. CHAP. 107.

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. To be recorded and where. R. S. c. 107, § 24. 19 Me. 151.

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. When it may be used in evidence, &c. R. S. c. 107, § 25. 1862, c. 118. 1864, c. 222.

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. How such depositions may be taken out of the state. R. S. c. 107, § 26.

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. The court to order notice, and after a hearing, issue commission. R. S. c. 107, § 27.

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. Such deposition to be taken on interrogatories; Application may be filed in vacation, and notice given. R. S. c. 107, § 28.

PENALTY FOR REFUSING TO APPEAR OR TO GIVE DEPOSITIONS.

SEC. 29. When a magistrate, duly authorized, has summoned a person before him to give his deposition or affidavit in any case authorized by this chapter, pending in this or any other state; 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 such person before him; Proceedings to compel a deponent to appear and depose. Adjournment if he does not. Capias may then be issued. Who may serve it and where. Punishment if he refuse to depose. R. S. c. 107, § 29.

CHAP. 108. and if, at the time of the adjournment, he is not apprehended, the magistrate may adjourn from time to time, until he is brought before him; and if he then 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. The capias may be served by the sheriff, deputy sheriff, or any constable of the county, in which such person resides; and if he escapes into another county, either of said officers may arrest him there, and bring him before said magistrate.

1864, c. 236,
§ 2.
1868, c. 198.
22 Me. 337.

CHAPTER 108.

REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

- Sec. 1. What controversies may be referred; powers of referees; form of submission; not to be revoked but by consent.
2. Submission of all demands, and of a specific demand.
 3. All referees must hear; a majority may decide; may allow costs or not; may swear witnesses.
 4. How and when report to be returned to court.
 5. Report accepted, rejected or recommitted; exceptions; notice of new hearing; judgment on report; writ of error to review it.

What controversies may be referred; powers of referees; not to be revoked.
R. S. c. 108, § 1.
5 Me. 38
13 Me. 41.
18 Me. 251,
255.
22 Me. 240.
23 Me. 125.
32 Me. 73.
34 Me. 161.
36 Me. 19, 593.
41 Me. 355.
47 Me. 423.
55 Me. 241.

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SEC. 1. All controversies which may be the subject of a personal action, may be submitted to one or more referees, who shall have the same powers as those appointed by the court; and the parties personally, or by attorney, may sign and acknowledge an agreement before a justice of the peace, though he is one of the referees 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 for hearing the parties, they may proceed in his absence.

Dated this _____ day of _____, in the year _____.

Such agreement shall not be revoked without mutual consent; but the parties may agree when the report shall be made, and vary the form accordingly.