

MAINE STATE LEGISLATURE

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SIXTH REVISION

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CHAPTER 112.

Depositions.

Sec. 1. In what cases depositions may be used. R. S. c. 109, § 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, libels for forfeiture of personal property, prosecutions for the maintenance of bastard children, petitions for review, and in trials before probate courts, arbitrators, referees and county commissioners; and in cases of contested senatorial or representative elections. Depositions or affidavits may also be taken in applications for pensions, bounties or arrears of pay under any law of the United States.

See c. 7, § 86; c. 15, § 132, Art. 91; c. 56, § 55; c. 68, § 6; c. 94, § 1, ¶ iv.

Sec. 2. Before whom to be taken. R. S. c. 109, § 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 is then nor was previously, counsel.

25 Me. 439; 66 Me. 352; 68 Me. 219.

Sec. 3. When a cause is deemed pending. R. S. c. 109, § 3. No suit, petition, libel or prosecution, is, for the purposes of this chapter, pending, until 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 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 given to the adverse party.

15 Me. 451; 16 Me. 258; 37 Me. 413; 69 Me. 338.

Sec. 4. Reasons for taking. R. S. c. 109, § 4. 1909, c. 159. Depositions may be taken for any of the following causes:

I. When the deponent is so aged, infirm or sick, as to be unable to attend at the place of trial.

II. When the deponent resides out of, or is absent from the state.

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

21 Me. 215.

IV. When the deponent is a justice of the supreme judicial, or a superior court, or is judge of a court of probate, and is prevented by official duty from attending the trial.

V. When the deponent resides in a town other than that in which the trial is to be held; 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, or that he has become so infirm or sick since the taking of the deposition as to be unable to attend the place of trial.

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

Sec. 5. Summons to deponent, and notice to adverse party. R. S. c. 109, § 5. On application of either party to a justice of the peace or notary public, he may issue a summons to any deponent, except the adverse party, to appear at a designated time and place to give his deposition, and shall issue 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, but the deposition of such adverse party may be taken by commission as is provided for taking depositions of other witnesses by commission.

See § 21; 41 Me. 600.

Sec. 6. Service of notice. R. S. c. 109, § 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.

37 Me. 413; 72 Me. 471.

Sec. 7. Who shall be considered attorney of the adverse party. R. S. c. 109, § 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.

29 Me. 69; 33 Me. 423; 36 Me. 359; 52 Me. 480.

Sec. 8. Notice to one adverse party sufficient; time of notice; verbal notice; notice to take deposition out of the state. R. S. c. 109, § 8. Where there are several plaintiffs or defendants, notice is sufficient, if given by the justice or notary to one or more of them; the adverse party shall be allowed not less than 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 the time appointed for taking the deposition. Verbal notice to the adverse party by a justice or notary is 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.

16 Me. 43; 36 Me. 283; 61 Me. 509; 63 Me. 52, 53; 64 Me. 533; 72 Me. 471.

Sec. 9. Form of notice to adverse party. R. S. c. 109, § 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 —, 19—, at — o'clock in the — 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 —, 19—.

—, Justice of the Peace."

Sec. 10. Form of summons to deponent. R. S. c. 109, § 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 —, 19—, at — o'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 — day of —, in the year 19—.

— —, Justice of the Peace.”

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

Sec. 11. Witness may be compelled to give his deposition. R. S. c. 109, § 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 section four, unless the adverse party uses the witness at such trial.

36 Me. 283.

Sec. 12. Deponent shall be sworn; manner of examination. R. S. c. 109, § 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.

24 Me. 173; 34 Me. 71; 35 Me. 133, 372, 511; 38 Me. 144; 44 Me. 75.

Sec. 13. Deposition to be signed. R. S. c. 109, § 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.

66 Me. 353; see § 31.

Sec. 14. Rejected for deception; closing. R. S. c. 109, § 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 until the expiration of one hour after the time appointed for the taking.

53 Me. 180.

Sec. 15. Form and requisites of caption. R. S. c. 109, § 15. The justice or notary shall make out a certificate and annex it to the deposition, therein stating the following facts:

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- I. That the deponent was first sworn according to law, and when.
- II. 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.
- III. Whether the adverse party was notified to attend, and did or did not attend.
- IV. The cause in which the deposition is to be used and the names of the parties thereto.
- V. The court or tribunal in which it is to be tried, and the time and place of trial.
- VI. The cause of taking the deposition.

28 Me. 33; 31 Me. 587; 33 Me. 381; 34 Me. 71, 210; 36 Me. 73, 283, 467;
38 Me. 146; 41 Me. 335; 44 Me. 75; 45 Me. 470; 68 Me. 219.

Sec. 16. To be delivered in court, or sealed up. R. S. c. 109, § 16. The deposition shall be delivered by the justice or notary to the court or referees before whom the cause is to be tried, or shall be enclosed and sealed up by him, and directed to such court or referees, and kept sealed until opened by their order.

70 Me. 292.

Sec. 17. When not to be used. R. S. c. 109, § 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.

20 Me. 259; 28 Me. 41; 63 Me. 419.

Sec. 18. Objections to competency. R. S. c. 109, § 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 were testifying 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 the objection is not withdrawn, it shall be noted thereon, otherwise it shall not afterwards be allowed.

14 Me. 153; 37 Me. 215; 45 Me. 468; 47 Me. 253; 82 Me. 29.

Sec. 19. When depositions may be used in second suit. R. S. c. 109, § 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 until the commencement of the second.

55 Me. 172; 65 Me. 13.

Sec. 20. Taken out of the state. R. S. c. 109, § 20. The court may admit or reject depositions taken out of the state by a justice, notary or other person empowered to take them.

29 Me. 167; 31 Me. 506; 32 Me. 180; 41 Me. 107; 50 Me. 421; 52 Me. 480;
63 Me. 52; 108 Me. 62.

Sec. 21. Commissions to take such depositions. R. S. c. 109, § 21. The justices of the supreme judicial court or of the superior courts may issue commissions to take depositions without the state, to be used in suits pending in the state, on such terms and conditions as they think proper.

32 Me. 179.

Depositions in Perpetuam.

Sec. 22. Application for taking a deposition in perpetuam, and notice to persons interested. R. S. c. 109, § 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, 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, 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.

4 Me. 90, 486; 17 Me. 354; 72 Me. 470; 85 Me. 423.

Sec. 23. How such a deposition shall be taken and certified. R. S. c. 109, § 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 nearly 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. Record in registry of deeds. R. S. c. 109, § 24. The statement, deposition and certificate, shall within ninety days after the taking, 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.

19 Me. 153.

Sec. 25. Use in evidence. R. S. c. 109, § 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.

Sec. 26. Commission to take such depositions out of the state. R. S. c. 109, § 26. Depositions, to perpetuate the testimony of witnesses living out of this state, may be taken in any other state, or foreign country, upon a commission issued by the supreme judicial court; and the persons desiring 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.

72 Me. 470.

Sec. 27. Court after notice and hearing may issue commission. R. S. c. 109, § 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

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applicant, if no adverse party appears, may issue a commission for taking such deposition as in a cause pending.

72 Me. 470-1.

Sec. 28. Taken on interrogatories; application may be filed in vacation, and notice given. R. S. c. 109, § 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.

72 Me. 470.

Penalty for Refusing to Appear, or to Give Deposition.

Sec. 29. Proceedings, to compel a deponent to appear and depose. R. S. c. 109, § 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; 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 county jail 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.

16 Me. 256; 22 Me. 358; 68 Me. 219.

Sec. 30. Appointment of stenographers as commissioners to take depositions; powers. R. S. c. 109, § 30. The governor, with the advice and consent of the council, may, upon the written recommendation of any judge of the supreme judicial court, appoint competent stenographers of either sex, as commissioners to take depositions in all cases and disclosures of trustees, who shall hold office for four years. They may act throughout the state and shall have and exercise the same powers in taking depositions and disclosures of trustees as are exercised and possessed by justices of the peace.

Sec. 31. Depositions and disclosures, how taken. R. S. c. 109, § 31. Depositions and disclosures of trustees may be taken by such commissioners stenographically by the consent of the parties to the suit or proceeding, and their notes shall be transcribed in full by questions and answers, and read to the deponent or trustee and signed by him. If the

deponent or trustee, in writing, waives such reading, the transcript shall be admissible as his deposition or disclosure, without his signature. No change of or addition to the transcript shall be made by the deponent or trustee except in the presence of the counsel who attested the taking of the deposition. The commissioner shall state the facts in his certificate, as to reading, signature or waiver, and what, if any, changes or additions were made.

Sec. 32. Fees. R. S. c. 109, § 32. They shall receive the same fees for travel, swearing witnesses, notifying parties and deponents as are received by justices of the peace, and in addition thereto, twenty cents a page for their transcripts.

See c. 118, § 2.

Note. Depositions to prove copy of lost deed, c. 78, § 35.
Depositions may be taken out of the state before commissioners appointed by governor, c. 78, § 26.

CHAPTER 113.

Reference of Disputes by Consent of Parties.

Sec. 1. What controversies may be referred; powers of referees; revocation only by consent. R. S. c. 110, § 1. All controversies which may be the subject of a personal action, may be submitted to one or more referees, with 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, although 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 — —; and judgment rendered on their report, or that of a majority of them, made to the supreme judicial" (or "superior") "court for the said 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 —, A. D., 19—."

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.

5 Me. 41; 18 Me. 253, 257; 22 Me. 241; 23 Me. 130; 32 Me. 79; 34 Me. 161;
36 Me. 21, 594; 41 Me. 357; 47 Me. 425; 55 Me. 245; 59 Me. 129; 60 Me.
102; 62 Me. 50, 120; 64 Me. 367.

Sec. 2. Submission of all demands, and of a specific demand. R. S. c. 110, § 2. If all demands between the parties are so submitted, no specific demand need be annexed to the agreement; but if a specific demand only