

# MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT  
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VOLUME I



By the Authority of the Legislature

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desires a jury trial upon his petition, he may indorse a request therefor upon the petition at the time of entry and shall thereupon be entitled to the same.

**Sec. 23. Notice to attorney-general. R. S. c. 91, § 32.** Notice of said petition shall be given to the attorney-general by causing an attested copy of the same to be served upon him by an officer qualified to serve civil process, at least 14 days prior to the 1st day of the term of court at which said petition is entered and the attorney-general may appear and be heard thereon.

**Sec. 24. Change of residence. R. S. c. 91, § 33.** In the event of a subsequent change of residence on the part of any person so declared to be a citizen of this state, said court shall also have jurisdiction and authority upon petition therefor and like proceedings had to make a judicial declaration of such change of residence, and decree that the former judgment entered in such case shall thereafter be of no force and effect.

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## CHAPTER 95.

### CONCURRENT JURISDICTION OF SUPREME AND SUPERIOR COURTS.

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|----------|-------|---|
| Section  | 1     | Habeas Corpus and Extraordinary Remedies. |
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#### Habeas Corpus and Extraordinary Remedies

**Sec. 1. Concurrent jurisdiction of supreme judicial court and superior court in habeas corpus and extraordinary remedies. R. S. c. 91, § 34.** The supreme judicial court and the superior court shall have and exercise concurrent original jurisdiction in proceedings in habeas corpus, writs of prohibition, error, mandamus, quo warranto, and certiorari.

#### Equity

**Sec. 2. Concurrent jurisdiction of supreme judicial court and superior court in equity. R. S. c. 91, § 35.** The supreme judicial court and the superior court shall have and exercise concurrent original jurisdiction in all equity cases and proceedings; and causes in equity originating in either court or any proceeding therein may be heard and determined by a justice of the supreme judicial court or of the superior court as though the cause originated in the court of which such justice is a member. There shall be only 1 equity docket in each county, and all equity cases commenced in a county shall be entered consecutively on the equity docket in that county.

128 Me. 528; 134 Me. 116; 135 Me. 190.

**Sec. 3. Rules of practice in equity cases. R. S. c. 91, § 71.** The supreme judicial court shall make all proper rules for the regulation of equity practice necessary to simplify proceedings, discourage delays, and lessen the expense of

litigation, and it has full power for that purpose; but no rule of court now existing is repealed, except so far as it is inconsistent herewith.

**Sec. 4. Equity powers.** R. S. c. 91, § 36. 1937, c. 78. The supreme judicial court and the superior court have jurisdiction as a court of equity, in the following cases:

7 Me. 231; 8 Me. 322; 17 Me. 141, 294, 407; 18 Me. 210; 19 Me. 127, 366, 434; 20 Me. 271; 21 Me. 257, 276; 22 Me. 196, 209, 515; 23 Me. 48, 100, 178, 270, 451; 24 Me. 47; 25 Me. 282, 345, 381, 537; 29 Me. 276, 496; 31 Me. 96; 32 Me. 402, 483; 33 Me. 224, 534; 34 Me. 144, 372; 36 Me. 52, 124, 583; 37 Me. 269, 310; 40 Me. 246; 41 Me. 119; 50 Me. 239; 59 Me. 79; 72 Me. 281; 135 Me. 190, 386, 494.

**I.** For the foreclosure of mortgages of real and personal property, and for redemption of estates mortgaged.

See c. 163, § 30; 59 Me. 35, 77; \*75 Me. 268; 83 Me. 293; \*86 Me. 59; 135 Me. 386.

**II.** For relief from forfeiture of penalties to the state, from forfeitures in civil contracts and obligations, and in recognizances in criminal cases.

53 Me. 63; \*103 Me. 453.

**III.** To compel the specific performance of written contracts, and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.

See c. 157, § 49; c. 163, § 24; c. 106, §§ 13, 14, 17; 40 Me. 132; 42 Me. 40; 46 Me. 41; 47 Me. 315; 63 Me. 99; 84 Me. 198; \*85 Me. 434; 95 Me. 224; 97 Me. 400; 98 Me. 511; \*117 Me. 279.

**IV.** For relief in cases of fraud, trust, accident or mistake.

See c. 141, § 81; c. 147, §§ 18-20; c. 157, § 15; 43 Me. 211; 44 Me. 216; 45 Me. 131; 49 Me. 366; 57 Me. 510; 60 Me. 183; 61 Me. 514; 62 Me. 58, 522; 67 Me. 220; \*69 Me. 497; \*71 Me. 570; 73 Me. 33; \*74 Me. 589; 96 Me. 41; 116 Me. 399; \*127 Me. 269; 135 Me. 190; 136 Me. 480, 500.

**V.** In cases of nuisance and waste.

See c. 128, §§ 1, 20; c. 111, § 7; 60 Me. 194; 102 Me. 285.

**VI.** In cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.

See c. 42, § 53; 76 Me. 274.

**VII.** In cases of partnership, and between partners or part owners of vessels and of other real and personal property to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees, and enforce their decrees by proper process in cases where all interested persons, within the jurisdiction of the court, are made parties.

See c. 87, § 5; c. 141, § 80; c. 167, § 18; 52 Me. 57; 62 Me. 114; \*64 Me. 465; 73 Me. 75; \*78 Me. 150.

**VIII.** (1937, c. 78) Of bills of interpleader notwithstanding the complainant is a common carrier and as such has a lien for carriage or storage upon the property which is described in the bill. No complainant in interpleader shall be denied relief by reason of any interest in the fund or other subject matter in dispute. Nothing herein contained shall be construed to dispense with any of the other requisites for a bill of interpleader.

**IX.** To hear and determine property matters between wife and husband, or husband and wife as provided in section 40 of chapter 153 and to make all necessary orders and decrees relating to such matters, and to issue all necessary process to enforce such orders and decrees, and to cause all such orders and decrees to be enforced.

\*114 Me. 382.

**X.** To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust, and the expediency of making changes and investments of property held in trust.

See c. 147, § 10; c. 150, § 12; c. 155, § 14; 49 Me. 302; 57 Me. 143, 524; 59 Me. 330, 481; 62 Me. 541; 64 Me. 493; 66 Me. 101, 535; 68 Me. 35, 381; 69 Me. 289; 70 Me. 210; \*80 Me. 594; 82 Me. 80; 84 Me. 555; 85 Me. 133; 86 Me. 134; \*97 Me. 523; \*99 Me. 499; 104 Me. 323; \*111 Me. 248, 521; \*115 Me. 408; \*115 Me. 418; 116 Me. 382; 117 Me. 465; 120 Me. 431; 126 Me. 51; 137 Me. 259; 138 Me. 1.

**XI.** In suits for redelivery of goods or chattels taken or detained from the owner, and secreted or withheld, so that the same cannot be replevied, and in bills in equity, by creditors, to reach and apply in payment of a debt, any property, right, title, or interest, legal or equitable, of a debtor, or debtors, which cannot be come at to be attached on writ, or taken on execution in a suit at law, and any property or interest conveyed in fraud of creditors.

See c. 107, § 33; 71 Me. 70; \*73 Me. 570; \*76 Me. 447; \*77 Me. 474; 78 Me. 249; 79 Me. 230; \*84 Me. 326, 495; 90 Me. 380; 92 Me. 268; 96 Me. 43; 99 Me. 189; 104 Me. 493; 107 Me. 315; 110 Me. 437; \*111 Me. 557; 112 Me. 150; \*114 Me. 115; \*118 Me. 29; 119 Me. 213; 134 Me. 186; 135 Me. 382.

**XII.** In cases where the power is specially given by statute, and for discovery when a discovery may be lawfully required according to the course of chancery proceedings.

See c. 87, § 5; \*43 Me. 574; 53 Me. 441.

**XIII.** When counties, cities, towns, school districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint.

See c. 80, § 79; 55 Me. 65; \*56 Me. 37; 60 Me. 127; 80 Me. 134; 85 Me. 49; 87 Me. 89; \*92 Me. 531; 93 Me. 501; \*100 Me. 30; 108 Me. 474; 111 Me. 486; \*113 Me. 123; 120 Me. 15; 124 Me. 251, \*314; 127 Me. 19; 130 Me. 36, 498; 133 Me. 141; 134 Me. 414.

**XIV.** And have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.

58 Me. 137; 69 Me. 303; 71 Me. 554, 570; 73 Me. 244; 74 Me. 234, \*588; 75 Me. 268; 77 Me. 69, 95; \*86 Me. 57; 114 Me. 333; 117 Me. 17; 136 Me. 480, 498.

**Sec. 5. Jurisdiction between partners and part owners; extent and effect on other parties.** R. S. c. 91, § 37. The court has jurisdiction of cases mentioned in subsection VII of the preceding section, notwithstanding persons interested not within the jurisdiction of the court, are not made parties; but, in such cases, no decree affects the right of any person not a party to the suit, unless he voluntarily becomes a party before final decree, except as hereinafter provided. In all such cases, the court has jurisdiction, if the case requires it, over all property of the partnership or cotenancy within the state, and the other partners or cotenants, out of the jurisdiction, may protect their interests by coming in at any time as parties to the bill; but, if there is no such property within the state, the jurisdiction of the court is limited to the adjustment of accounts and compelling contribution between the parties over whom the court has jurisdiction.

**Sec. 6. Property of debtor out of state, or of uncertain value, may be applied.** R. S. c. 91, § 38. The court has jurisdiction of cases mentioned in sub-

section XI of section 4, notwithstanding the fact that the property sought to be reached and applied is in the hands, possession, or control of the debtor independently of any other person, or that it is not within the state, or that it is of uncertain value, provided the value can be ascertained by a sale or appraisal, or by any means within the ordinary procedure of the court, or that it cannot be reached and applied until a future time.

119 Me. 215.

**Sec. 7. Interest of a copartner may be applied in payment of plaintiff's debt. R. S. c. 91, § 39.** In such suit the interest of a copartner in the partnership property may be reached and applied to the payment of the plaintiff's debt; provided, however, that unless the plaintiff's debt is in judgment, the business of the partnership shall not be interfered with by injunction or otherwise, farther than to restrain the withdrawal of any portion of the debtor's share or interest therein, until the plaintiff's debt is established; and provided further, that if either copartner shall give to the plaintiff a sufficient bond with sureties approved by the clerk, conditioned to pay to the plaintiff the amount of his debt and costs, within 30 days after the same is established, the court shall proceed no further therein save to establish the debt; and any injunction previously issued shall be dissolved upon the filing of such bond. But no provision of subsection XI of section 4, or of this section, or of section 6 shall be so construed as to reach and apply in payment of a debt, any property exempted by the provisions of sections 6, 7, 8, and 20 of chapter 54, and by chapter 99.

See c. 99, § 67, sub-§ XI.

**Sec. 8. Masters in chancery; appointment; tenure; duties; payment of fees. R. S. c. 91, § 40. 1941, c. 60.** The supreme judicial court by majority, shall appoint masters in chancery, not more than 5 in a county, and make all needful rules relating to proceedings before them. Such masters shall be sworn, and hold their offices for 5 years, unless sooner removed by the court; perform the duties pertaining to their offices according to equity practice, and be entitled to the fees therefor allowed by the court. Unless the parties agree upon another person, all cases shall be committed to them. The fees and necessary expenses of masters so appointed, and of masters who shall act in any cause by agreement of parties, shall be fixed and allowed by the court upon the coming in of the report, and, if the court in its discretion shall so order, shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county. Hearings before masters in chancery shall be subject to the established rules for the admission of evidence. Evidence may be presented wholly or partly by oral testimony or depositions. When oral testimony is used, unless it is otherwise stipulated in writing by the parties, it shall be reduced to writing by the stenographer. The depositions and a transcript of the evidence shall be admissible on behalf of either party on hearings on the acceptance of the master's report and in all further proceedings in the cause.

40 Me. 53; 53 Me. \*216, 352.

**Sec. 9. Court always open for equity proceedings. R. S. c. 91, § 41.** Said court shall always be open in each county for equity proceedings, except upon days on which, by law, no court is held, and in the first instance, except as hereinafter provided, all hearings shall be had, all orders and decrees made, and all process issued by a single justice, except on 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.

75 Me. 417; 82 Me. 250; 96 Me. 44; \*101 Me. 156; \*107 Me. 70.

**Sec. 10. Causes in equity, how begun, return of subpoena, and service. R. S. c. 91, § 42.** 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 on the 1st day of a term of court for the county where it is filed, or upon a rule-day, which in either case shall be held within 60 days after the filing of such bill, and such subpoena shall be served at least 14 days before the return day thereof; or, by order of 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 plaintiff, with brevity, omitting immaterial and irrelevant matters, and may be amended or reformed at the discretion of the court, with or without terms, at any time before final decree is entered in said cause.

See c. 99, § 64; 56 Me. 76; \*71 Me. 169; \*77 Me. 140, 499; 82 Me. 202, 250; \*101 Me. 156; 111 Me. 559; 125 Me. 210.

**Sec. 11. Certificate to be recorded in registry of deeds. R. S. c. 91, § 43.** No action commenced by bill in equity not inserted in a writ of attachment, in which the title to real estate is involved, is effectual against any person not a party thereto or having actual notice thereof, until a certificate, setting forth the names of the parties, the date of the bill and the filing thereof, and a description of the real estate in litigation as described in said bill, duly certified by the clerk of courts in and for the county where said bill is pending, is recorded in the registry of deeds in the county or district in which such real estate is situated.

See § 29; c. 79, §§ 115, 246; c. 99, § 64; 94 Me. 322.

**Sec. 12. Verification of bill. R. S. c. 91, § 44.** Verification by the oath of a party for whose benefit the bill sets forth that it is prosecuted, is equivalent to such verification by the plaintiff.

**Sec. 13. Bills of discovery and answers thereto. R. S. c. 91, § 45.** 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 30 days after the return day of such bill, or within such time as the court orders, and questions arising thereon shall be determined by the rules established by said court as herein provided, and in the absence thereof, by the rules applicable to bills of discovery in equity procedure.

**Sec. 14. Appearance by defendant; proceedings in case of default. R. S. c. 91, § 46.** When process is made returnable at any regular term, the defendant shall appear within the first 3 days thereof; otherwise on the return day of such process; and in default thereof, on motion of the plaintiff in writing, the bill shall be taken pro confesso, as matter of course, at the expiration of 10 days after the filing of such motion, but such decree for good cause shown, on motion of the defendant, may be opened within 10 days after it is made, and in such case the court shall fix the time for making a defense.

See § 18; 96 Me. 305; 111 Me. 132.

**Sec. 15. Defense, how and when to be made; proceedings on default; form of answer. R. S. c. 91, § 47.** Defense shall be made by answer, plea or demurrer, within 30 days after the time for appearance has 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 defense the bill shall be taken pro confesso, as matter of course, on motion of plaintiff in writing, filed on any day after such default, and served on the defendant. But such decree may be opened, on motion of defendant within 10 days thereafter, as provided in said section. All answers shall be signed by the defendant and sworn to by him, if the plaintiff in his bill asks for an answer upon oath, otherwise it may be signed by the defendant, his agent or attorney, but in such case it has no effect as evidence, except to cast the burden of proof upon the plaintiff.

78 Me. 88; 95 Me. 305; 108 Me. 101; 135 Me. 382.

**Sec. 16. Replication. R. S. c. 91, § 48.** The plaintiff shall file a replication within 15 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 orders, or the bill may be dismissed for want of prosecution, on motion filed by defendant at any time after said 15 days, or at the expiration of the time ordered by the court for filing such replication.

**Sec. 17. Time for hearing upon bill and demurrer. R. S. c. 91, § 49.** When a demurrer is filed, the court upon motion of either party may set the cause for hearing upon bill and demurrer at any time. When a plea or answer is filed, the court, upon the motion of the plaintiff, may set the cause for hearing upon bill and plea or answer at any time. When a replication is filed, the court, upon the motion of either party, may set the cause for hearing upon bill, answer, or plea and evidence, but such hearing shall not be had until after 30 days from the filing of the replication, unless by consent or special order of court. When a jury trial is ordered, it shall be had at the next jury term after such 30 days unless otherwise ordered by the court. Any time fixed for hearing or trial may be extended for good cause shown.

90 Me. 399; 123 Me. 80.

**Sec. 18. Court may fix time limits. R. S. c. 91, § 50.** In all causes the court, by special order, may fix such time or times for filing answer, plea, demurrer, or replication, or for hearing of the cause, as justice may require.

**Sec. 19. Testimony at hearing. R. S. c. 91, § 51.** At any hearing or trial in equity, the evidence may be presented wholly or partly by oral testimony or by depositions. When oral testimony is used, it shall be reduced to writing by the stenographer, certified by him, and filed with the depositions for use in case of appeal.

See c. 100, § 186; 108 Me. 337.

**Sec. 20. Justice to decide cause, subject to appeal. R. S. c. 91, § 52.** The justice, before whom such hearings are had, has full power to decide any motion or cause so heard, and shall make and enter such order and decree, as seems just and proper to him and in accordance with the established principles of equity jurisprudence, subject to appeal and exceptions as hereinafter provided.

\*75 Me. 417; 79 Me. 41; 88 Me. 359; 108 Me. 338.

**Sec. 21. Appeal, how to be claimed; proceedings in law court. R. S. c. 91, § 53.** From all final decrees of such justice, an appeal lies to the next term of the law court. Said appeal shall be claimed by an entry on the docket of the court from which the appeal is taken, within 10 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 the 1st 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 shall on such appeal, affirm, reverse, or modify the decree of the court below, or remand the cause for further proceedings, as it deems 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.

\*78 Me. 337; 81 Me. 141; \*82 Me. 203; 83 Me. 193; \*88 Me. 359; 99 Me. 223; \*106 Me. 546; \*107 Me. 150; 109 Me. 457; 120 Me. 151; \*121 Me. 214; 134 Me. 383, 391; 135 Me. 344, 467; 136 Me. 15; 137 Me. 53.

**Sec. 22. Justice may make orders for protection of rights of parties while an appeal is pending. R. S. c. 91, § 54. 1941, c. 2.** 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 protection of the rights of the parties or as are usual in equity proceedings in such cases, until the appeal is determined by the law court. While the appeal is pending before the law court, such orders may be modified or annulled either by such justice or by the law court.

**Sec. 23. Appeal from interlocutory decree. R. S. c. 91, § 55.** 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 are open for revision, reversal, or approval.

See § 51; \*80 Me. 100; 90 Me. 467; \*95 Me. 253; \*96 Me. 44; 125 Me. 403; 133 Me. 9; 134 Me. 495; 135 Me. 379; 137 Me. 327.

**Sec. 24. Justice may report cause. R. S. c. 91, § 56.** Upon a hearing in any cause in equity, the justice hearing the same may report the cause to the next term of the law court, if he is of the 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 plaintiff and shall be heard and decided by said law court in like manner and with like results as is herein provided in case of appeals.

\*75 Me. 417; \*78 Me. 337; 82 Me. 250; 83 Me. 190; 119 Me. 143; 130 Me. 56, 288, 520; 135 Me. 84.

**Sec. 25. Justice may grant further time for appeal. R. S. c. 91, § 57.** If any party, intending to appeal, by accident or mistake fails to do so within the time limited therefor, he may within 30 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 appear just and equitable.

**Sec. 26. Exceptions; justice to give separate findings of law and fact; other proceedings not suspended. R. S. c. 91, § 58.** Either party aggrieved may take exceptions to any ruling of law made by a single justice, 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 like 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 is open to the law court on such exceptions. 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.

See § 51; 78 Me. 337; \*80 Me. 100; \*88 Me. 359; 89 Me. 21; 90 Me. 468; \*95 Me. 253; \*107 Me. 150; 125 Me. 403; 133 Me. 9; 136 Me. 406.

**Sec. 27. Date of order and decree.** R. S. c. 91, § 59. 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.

\*82 Me. 204; \*107 Me. 70.

**Sec. 28. Issuance of process to enforce final decree.** R. S. c. 91, § 60. No process for enforcement of a final decree, save for the appointment of receivers, for injunction or prohibition, or for continuing the same, shall issue within 10 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.

**Sec. 29. Judgment, divesting person of real estate, recorded in registry of deeds.** R. S. c. 91, § 61. No judgment or decree divesting any person of title to real estate shall be effectual against any person not a party to the action in which such judgment or decree is rendered, and persons not having actual notice thereof, unless a copy of such judgment or decree or so much thereof as relates to the title to such real estate, duly certified by the clerk of courts in and for the county where said judgment or decree is rendered, is, within 30 days after the rendering of such judgment or decree, duly recorded in the registry of deeds in the county or district in which such real estate is situated.

See c. 79, §§ 115, 246; 94 Me. 322; 108 Me. 320; 130 Me. 322.

**Sec. 30. Hearings.** R. S. c. 91, § 62. Hearings and trials in equity cases may be had, and orders and decrees may be passed, at such place in any county as the justice applied to may appoint; and the clerk in the county in which the case is pending shall transmit the papers in the case to the justice to hear the same; and such justice shall return them after hearing with his orders and decrees therein to be filed and entered in such county.

**Sec. 31. Evidence in court below, reported; no witnesses heard orally in law court.** R. S. c. 91, § 63. 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 the court may, in such manner and on such terms as it deems proper, authorize additional evidence to be taken when the same has been omitted by accident or mistake or discovered after the hearing.

\*100 Me. 273; \*125 Me. 208; 130 Me. 50, 56; 126 Me. 605; 136 Me. 480.

**Sec. 32. Jury trial in equity; procedure.** R. S. c. 91, § 64. The court may, in its discretion and upon application of either party, frame issues of fact in equity causes, to be tried by a jury in the superior court in the county where such cause is pending. The presiding justice may confirm any verdicts rendered upon such issue or issues as were submitted to the jury and enter appro-

appropriate decrees thereon, or he may set aside such verdicts, and render such decrees as equity requires, as if such issues had not been framed. Further action may then be taken by such presiding justice or the cause may be further heard by any justice of the supreme judicial court or of the superior court. In all causes where such issues are framed and tried, an appeal may be taken and exceptions had to rulings of law, as hereinbefore provided, and upon such appeal or exception, the law court may confirm or set aside the verdicts rendered in the cause, or order a new trial of such issues, and make such disposal of the case as equity demands. All such appeals and exceptions shall be taken, heard, and determined as provided by sections 21 to 26.

65 Me. 447; 75 Me. 417; 80 Me. 175; 118 Me. 119; 120 Me. 153.

**Sec. 33. Writs of seizin or execution, etc. may issue. R. S. c. 91, § 65.** Writs of seizin or execution, and all other processes appropriate to causes in equity, may be issued by the court to enforce its decrees.

**Sec. 34. Preliminary injunctions may be granted plaintiff; perpetual injunctions. R. S. c. 91, § 66.** Preliminary injunctions may be granted by a single justice in term time or in vacation, upon the plaintiff filing a bond with sufficient sureties conditioned to pay all damages and costs caused thereby, if he is finally found not entitled to such injunction, unless a single justice, on motion to dissolve the same and hearing on the merits thereof, refuses 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, upon oral evidence, depositions, or affidavits, and upon such notice and with such time for pleading, evidence, and hearing as the court directs. No preliminary injunction shall be granted to either party unless his pleadings contain an application therefor; but an injunction may be granted pending the suit, in proper cases, upon motion and hearing. Perpetual injunctions may be granted by the court or any justice thereof making final decree.

\*42 Me. 127; 49 Me. 322, 398; 54 Me. 404; 55 Me. 551; 60 Me. 194, 336; 81 Me. 305; 87 Me. 187; \*119 Me. 500.

**Sec. 35. Summary process when decree is disobeyed; proceedings, and punishment for contempt. R. S. c. 91, § 67.** Whenever a party complains in writing and under oath that the process, decree, or order of court, which is not for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring such person 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 does not appear as directed or does not attend the hearing at the time appointed therefor, as enlarged, or if, upon hearing, he is found guilty of such disregard or disobedience, he shall be adjudged in contempt, and the court may issue a *caipias* to bring him before it to receive sentence, and may punish him by such reasonable fine or imprisonment as the case requires. The court may allow such offender to give bail to appear at a time certain, when such punishment may be imposed, if he continues 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 per-

son purges himself of his contempt, the justice may remit such fine or imprisonment or any portion thereof. No appeal lies 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 so directs.

49 Me. 399; 60 Me. 334; 130 Me. 288; 135 Me. 294, 490.

**Sec. 36. No injunctions in labor disputes shall issue without hearing.** 1933, c. 261, § 1. No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than 48 hours.

Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then only upon testimony under oath, or in the discretion of the court upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided for.

Such a temporary restraining order shall be effective for no longer than 5 days, and at the expiration of said 5 days shall become void and not subject to renewal or extension, provided, however, that if the hearing for a temporary injunction shall have been begun before the expiration of the said 5 days, the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction. A temporary restraining order may be issued without notice on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the erroneous issuance of such order, including all reasonable costs and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. Nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

135 Me. 295.

**Sec. 37. Right of those judged in contempt.** 1933, c. 261, § 2. In all cases where a person shall be charged with contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, in any case involving or growing out of a labor dispute, the accused shall enjoy:

I. The rights as to admission to bail that are accorded to persons accused of crime;

II. The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court;

III. Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

135 Me. 491.

### Uniform Declaratory Judgments Act

**Sec. 38. Scope of declaratory judgments.** 1941, c. 233, § 1. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

See § 42.

**Sec. 39. Construction and validity of statutes, etc.** 1941, c. 233, § 2. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

See § 42.

**Sec. 40. Construction of contracts before or after breach.** 1941, c. 233, § 3. A contract may be construed either before or after there has been a breach thereof.

See § 42.

**Sec. 41. Rights of executor, etc.** 1941, c. 233, § 4. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent may have a declaration of rights or legal relations in respect thereto:

I. To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

II. To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

III. To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

See § 42.

**Sec. 42. Enumeration not exclusive.** 1941, c. 233, § 5. The enumeration in sections 39, 40, and 41 does not limit or restrict the exercise of the general powers conferred in section 38 in any proceeding where declaratory relief is sought,

in which a judgment or decree will terminate the controversy or remove an uncertainty.

**Sec. 43. Discretion of court.** 1941, c. 233, § 6. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

**Sec. 44. Review.** 1941, c. 233, § 7. All orders, judgments, and decrees under the provisions of sections 38 to 50, inclusive, may be reviewed as other orders, judgments, and decrees.

**Sec. 45. Supplemental relief.** 1941, c. 233, § 8. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

**Sec. 46. Jury trial.** 1941, c. 233, § 9. When a proceeding under the provisions of sections 38 to 50, inclusive, involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

**Sec. 47. Costs.** 1941, c. 233, § 10. In any proceeding under the provisions of sections 38 to 50, inclusive, the court may make such award of costs as may seem equitable and just.

**Sec. 48. Parties.** 1941, c. 233, § 11. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney-general shall also be served with a copy of the proceeding and be entitled to be heard.

**Sec. 49. Definition of "person".** 1941, c. 233, § 13. The word "person" wherever used in sections 38 to 50, inclusive, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

**Sec. 50. Uniformity of interpretation; title.** 1941, c. 233, §§ 15, 16. The provisions of sections 38 to 50, inclusive, shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees; and may be cited as the "Uniform Declaratory Judgments Act."

#### Miscellaneous Provisions

**Sec. 51. Proceedings in case of death or disability of presiding justice.** R. S. c. 91, § 72. In case of physical or mental disability, death, resignation, or removal of the justice presiding at any civil or criminal proceeding before the supreme judicial court or the superior court or at a hearing in equity in which

a motion for new trial is made, exceptions presented, or appeal taken, any justice of the supreme judicial court or of the superior court may, upon motion, and after notice and hearing, allow the exceptions, and upon request of the moving party, order the official stenographer to furnish a certified copy of the evidence required under the motion or appeal, and such portion thereof as may be made a part of the exceptions.

\*117 Me. 534; 118 Me. 63, 168.

**Sec. 52. Exceptions certified as frivolous; proceedings. R. S. c. 91, § 68.** When a justice deems any exceptions allowed by him, or any appeal in a proceeding in equity, 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 shall be transmitted to the chief justice, and be argued in writing on both sides within 30 days thereafter, unless the justice transmitting the same, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of courts of the county where the cause is pending; and if the decision is adverse to the party taking such appeal or exceptions, treble costs may be allowed the prevailing party.

83 Me. 406; 101 Me. 334; 137 Me. 110.

**Sec. 53. Exceptions intended for delay, overruled. R. S. c. 91, § 73.** When exceptions are certified and transmitted to the chief justice as frivolous and intended for delay, and are not argued by the excepting party within 30 days thereafter or within such further time as the presiding justice shall have allowed therefor, they may be at once overruled for want of prosecution.

119 Me. 15.

**Sec. 54. Absent defendant not served with process to have review within 1 year; proceedings; revisory power of court, save on appeal, not abridged. R. S. c. 91, §§ 69, 70.** In case of any decree, an absent defendant, 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 1 year after final decree as of right, with stay or supersedeas of such process. The defendant may in such case apply to any justice by petition setting forth the grounds for such review, whereupon, if such justice orders reasonable notice to the other party to appear at a 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 defendant's defense shall be made. Reviews may also be granted on petition, whenever, by fraud, accident, or mistake, and without fault of the party against whom the decree was ordered, justice has not been done; provided that the petition therefor is filed within 6 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.

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

107 Me. 73.

**Sec. 55. Legal holidays. R. S. c. 91, § 77. 1931, c. 98. 1935, c. 136, § 2.** No court shall be held on Sunday or any day designated for the annual thanksgiving; or for the choice of presidential electors; New Year's day, January 1st; Washington's birthday, February 22nd; the 19th day of April; the 30th day of

May; the 4th of July; the 1st Monday of September; the day of the state election; Armistice day, November 11th; or on Christmas day; and when the time fixed for a term of court falls on any of said days, it shall stand adjourned until the next day, which shall be deemed the 1st day of the term for all purposes. The public offices in county buildings may be closed to business on the above-named holidays. When any one of the above-named holidays falls on Sunday, the Monday following shall be observed as a holiday, with all the privileges applying to any of the days above named.

78 Me. 502, 582.

**Sec. 56. Adjournment of courts because of danger from infection. R. S. c. 22, § 88. 1933, c. 25.** When a malignant infectious distemper prevails in any town wherein the supreme judicial court, the superior court, or court of county commissioners is to be held, said courts may be adjourned and held in any town in said county, by proclamation made in such public manner as such courts judge best, as near their usual place of meeting as they think that safety permits.

83 Me. 116.

**Sec. 57. Surety bonds authorized in civil and criminal cases. 1935, c. 72.** In any civil or criminal action or mesne process or other process where a bail bond, recognizance, or personal sureties, or other obligation is required, or whenever any person is arrested and is required or permitted to recognize with sureties for his appearance in court, the court official or other authority authorized by law to accept and approve the same shall accept and approve in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this state.

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## CHAPTER 96.

### MUNICIPAL COURTS.

**Sec. 1. Appointment of municipal judges; all fees to be paid over; disposition of fines, costs, and forfeitures. R. S. c. 144, § 1. 1933, c. 118, §§ 1, 3. 1939, c. 293, § 1. 1943, c. 282.** Judges of municipal courts shall be appointed and shall hold their offices as provided in the constitution. All fines, penalties, and costs imposed by such courts, paid to the jailer after commitment of a respondent, shall be paid over by him, monthly as provided in section 5 of chapter 137.

Every judge of a municipal court shall maintain a bank account in the name of the court in which all fines, costs, and forfeitures received shall be deposited within 72 hours after their receipt.

See Const. of Me., Art. VI, § 8, re appointment and tenure.

**Sec. 2. Qualification of judges. R. S. c. 144, § 2. 1933, c. 118, §§ 1, 4.** No person shall be eligible for appointment as judge of any municipal court unless he shall be a member of the bar of this state and a resident of the county in which such court is located.

See c. 16, § 3, sub-§ IV, re authority of department of audit.