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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

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The reservation of the right to except should be on the docket. Ouelette v. Pageau, 150 Me. 159, 107 A. (2d) 500.

But judge's certification that exceptions are allowed is conclusive.—If there has been no express reservation and a bill of exceptions is presented to the justice for his signature and the justice is prepared to sign, the opposing party may object to the allowance, and call attention to the docket omission. If the judge, however, signs the bill of exceptions, the certification that exceptions are allowed is conclusive, provided there is nothing in the bill of exceptions itself or in the certificate of the judge to show the contrary. Ouelette v. Pageau, 150 Me. 159, 107 A. (2d) 500.

The law court has no jurisdiction of a motion for a new trial where a case is heard by the single justice. Ouelette v. Pageau, 150 Me. 159, 107 A. (2d) 500.

Sec. 19. Trial to proceed when dilatory pleas overruled.

And defendant prematurely entering case, etc.

In accord with 2nd paragraph in original. See State v. Melanson, 152 Me. 168, 126 A. (2d) 278.

Sec. 20. Interest on verdicts and awards.

Applied in Norridgewock v. Hebron, 152 Me. 280, 128 A. (2d) 215.

Chapter 107.

Concurrent Jurisdiction of Supreme and Superior Courts.

Equity.

Sec. 4. Equity powers.

X.

III. TRUSTS.

Court may entertain bill seeking construction of trust indenture.—Under equity practice and the specific provisions of this subsection the supreme judicial court has authority to pass upon the questions raised by the presentation of a bill in equity seeking the construction and interpretation of the provisions of a trust indenture. Fiduciary Trust Co. v. Brown, 152 Me. 360, 131 A. (2d) 191, quoting Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

But court will not act until necessity arises.

In accord with original. See Fiduciary Trust Co. v. Brown, 152 Me. 360, 131 A. (2d) 191.

XIII.

Subsection XIII held applicable. — The "10 taxable inhabitants" statute is applicable where a school district and its officers have taken action to pledge their credit for obligations already incurred and will in ordinary course attempt to pay out moneys. The equity statute is designed to afford protection against improper expenditures in such a case. Knapp v. Swift River Valley Community School Dist., 152 Me. 350, 129 A. (2d) 790.

Subsection XIII applied, in Carlisle v. Bangor Recreation Center, 150 Me. 33, 103 A. (2d) 339; Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Sec. 10. Causes in equity, return of subpœna and service.

Within 10 days after the service of a bill of complaint or other application in equity, the defendant, prior to the filing of his answer thereto, may make application to the chief justice of the supreme judicial court for the assignment of a justice to preside on the matter other than the justice to whom the original complaint or application was presented; upon the receipt of such application the chief justice may assign another justice to hear the matter. After such assignment, all petitions and motions relating thereto shall be presented to, and all matters relating to said cause shall be considered by, said justice in the manner prescribed by law for equity matters. (R. S. c. 95, § 10. 1953, c. 368. 1955, c. 392, § 2.)

Effect of amendment.—The 1955 amendment substituted the words "make application" for the words "petition in writing for good cause shown" near the beginning of the second paragraph and the word "application" for the word "petition" near

the middle of the second paragraph. As the first paragraph was not changed, it is not set out.

Applied in Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Sec. 14. Appearance by defendant; default.

Cross reference.

See note to § 15 of this chapter.

Sec. 15. Defense; default; answer.

Interlocutory decree pro confesso is indispensable to final decree.—On default of appearance or defense the bill shall be taken pro confesso. The interlocutory decree pro confesso is an indispensable prerequisite to making a final decree in the cause and the court will not proceed to a hearing, when proof ex parte is required or when there are other defendants, until a decree pro confesso has been duly entered against the defendants in default. Waiver of hearing is not a decree pro confesso. A default in equity requires action by the court. It is not accomplished by the acts of the parties. McGilvery v. McGilvery, 152 Me. 93, 123 A. (2d) 777.

Answer under oath not required unless requested. — Under this section the answer to a bill in equity shall be verified by oath, if the plaintiff in his bill asks for an answer upon oath. Otherwise, under our equity practice, an answer under oath is not required. Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Effect of answer under oath as evidence.—Where plaintiff asks for an answer upon oath the responsive portions of such an answer are evidence equal to testimony; but affirmative matter set up in the answer by way of avoidance must be proved. Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Applied in Munsey v. Groves, 151 Me. 200, 117 A. (2d) 64.

Sec. 17. Hearing upon bill and demurrer.

Motion for hearing on bill and answer properly denied.—Motion that the cause be heard only upon bill and answer, the answer to be taken as true, was properly denied. Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Sec. 21. Appeal, how claimed; proceedings in law court.

I. GENERAL CONSIDERATION.

What constitutes final decree.

In accord with original. See McGilvery v. McGilvery, 152 Me. 93, 123 A. (2d) 777.

Plaintiffs who have parted with their interest in the subject matter cannot obtain an appeal. Ingersoll v. Guy Gannett Pub. Co., 152 Me. 105, 124 A. (2d) 751.

Better practice is to file written statement of appeal with clerk.—While it would seem that under this section all an appellant needs to do in order to claim his appeal is to have an entry made on the docket within the specified time, better practice indicates the advisability of filing with the clerk a written statement of appeal. Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

II. PROCEEDINGS ON APPEAL.

The cause in the appellate court is heard anew upon the record.

In accord with 2nd paragraph in original. See Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

And all questions which appear in the record are open.

In accord with 1st, 2nd and 3rd paragraphs in original. See Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

And court not limited to errors claimed, etc.

In accord with original. See Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

But findings of the sitting justice are to stand, etc.

In accord with 1st paragraph in original. See Bell v. Bell, 151 Me. 207, 116 A. (2d) 921; Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

In accord with 2nd paragraph in original. See Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

And, in case of an appeal in equity, etc.

In accord with 1st paragraph in original. See Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Sec. 24. Justice may report cause.

Applied in Fiduciary Trust Co. v. Brown, 152 Me. 360, 131 A. (2d) 191.

Sec. 26. Exceptions; justice to give separate findings of law and fact; other proceedings not suspended.

And it is irregular to hear exceptions, etc.

In accord with original. See Munsey v. Groves, 151 Me. 200, 117 A. (2d) 64.

Ordinarily exceptions will not be entertained in the law court before a case in equity comes up for a final hearing but the limitation upon the right of immediate review of interlocutory orders is, however, subject to certain recognized exceptions. Where it is deemed to be more in the interest of justice that the questions involved should be determined, and the peculiar character of the questions presented hardly permits of postponement if any benefit is to be derived from it by the moving party, exceptions may be entertained by the law court before final hearing. This statute governing the equity practice in such cases has long been deemed directory rather than mandatory upon the theory that the legislature did not intend that a rigid adherence to the rule should defeat the ends of justice. Socec v. Maine Turnpike Authority, 152 Me. 326, 129 A. (2d) 212.

Exceptions can only present question of law.

Alleged errors were applicable to matters of fact and not open to consideration upon exceptions. Lovejoy v. Coulombe, 152 Me. 385, 131 A. (2d) 450.

Quoted in Central Maine Power Co., Re: Contract Rates, 152 Me. 32, 122 A. (2d) 541.

Sec. 29. Judgment divesting person of real estate recorded in registry of deeds.

Removal of cloud caused by title being held in dry trust.—A decree recorded according to the provisions of this section will effectively remove a cloud on title to land caused by title being held in a passive or dry trust. Wood v. LeGoff, 152 Me. 19, 121 A. (2d) 468.

Uniform Declaratory Judgments Act.

Sec. 38. Scope.

Procedure is governed by the "nature of the case." — The procedure to be followed in a petition for declaratory judgment is governed by the "nature of the case." Socec v. Maine Turnpike Authority, 152 Me. 326, 129 A. (2d) 212.

Applied in Trimount Coin Machine Co. v. Johnson, 152 Me. 109, 124 A. (2d) 753.

Sec. 44. Review.

Exceptions to overruling of demurrer not premature.—Exceptions to the overruling of a demurrer to a petition for declaratory judgment were not prematurely before the law court where demurrer and exceptions were used to ascertain whether the case was equitable in nature or whether the law procedure should govern, because case fell within the exception that where it is deemed to be more in the interest of justice that questions involved should be determined, and the particular character of the questions presented hardly permits of postponement if any benefit is to be derived from it by the moving party, exceptions may be entered in the law court before final hearing. Socec v. Maine Turnpike Authority, 152 Me. 326, 129 A. (2d) 212.

Miscellaneous Provisions. Legal Holidays.

Sec. 55. Legal holidays.—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 day of July; the 1st Monday of September; the day of the state-wide primary election; the day of the state election; the day of any special state-wide election; veterans 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. (R. S. c. 95, § 55. 1953, c. 225. 1955, c. 405, § 44.)

Effect of amendment.—The 1955 amendment substituted "veterans day" for "armistice day."

Chapter 108.

Municipal Courts.

Sec. 3. Recorder acting as judge; salary.

In case of the absence, sickness or disqualification of a judge of a municipal court, or in the event of a vacancy in the office of said judge, or at any other time at the request of said judge in order to expedite business, the recorder shall have the same powers as said judge, and shall be ex officio justice of the peace. (R. S. c. 96, § 3. 1955, c. 405, § 45.)

Effect of amendment.—The 1955 amendment added the above paragraph at the end of this section. As the rest of the section was not changed, it is not set out.

Sec. 4. Jurisdiction. — A municipal court shall not have jurisdiction in any civil matter unless a defendant resides within the county in which such court is established, or is a nonresident of the state and has personal service within the county, or a party summoned as trustee resides within the county, or property of the defendant is attached within the county in which such court is established; but in case of such personal service, trustee or attachment, such court shall have jurisdiction concurrent with the superior court and with all other municipal courts in the same county wherein it is established of all civil actions in which the debt or damages demanded do not exceed $600. Any action in which the judge of such municipal court may be interested, either by relationship, as counsel or otherwise, may be brought by such judge before any other court, superior or municipal, in the same county in the same manner and with like effect as other actions therein. (R. S. c. 96, § 4. 1957, c. 115.)

Effect of amendment. — The 1957 amendment increased the maximum amount of debt or damages demanded from $300 to $600.

Sec. 10. Costs and fees; overcharging costs.—The costs and fees taxed and allowed in all the municipal and trial justice courts shall be as follows:

Costs in civil actions. Costs to parties and attorneys in civil actions shall be:

To plaintiffs who prevail:

I. Where the damages recovered amount to $20 or more;	
Writ	$3.50
Entry	1.00
Officers' fees for serving writ, as allowed by the court	....
Attendance, each term	3.50
Travel, each term	.66
Witness fees, as allowed by the court	....
II. Where the damages recovered amount to less than $20;	
Writ	$2.00
Entry	1.00
Officers' fees for serving writ, as allowed by the court	....
Attendance, each term	2.00
Travel, each term	.66
Witness fees, as allowed by the court	....