

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

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Sec. 16. Authority of court.

Power to punish for contempt. — Under the provisions of this section, the superior court has power to punish for contempt. *Stern v. Chandler*, 153 Me. 62, 134 A. (2d) 550.

However, even in the absence of such a statute, the power of the superior court to punish for contempts is unquestionable. *Stern v. Chandler*, 153 Me. 62, 134 A. (2d) 550.

Sec. 17. Service of process.—Service of process shall be as prescribed by rule of court. (R. S. c. 94, § 17. 1959, c. 317, § 77.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 5.

If right to except is reserved.

In accord with 1st paragraph in original. See *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

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.

Cited in *Ray v. Lyford*, 153 Me. 408, 140 A. (2d) 749.

Sec. 18. Repealed by Public Laws 1959, c. 317, § 78.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 5.

Sec. 19. Trial to proceed when dilatory pleas overruled. — When a dilatory plea is overruled and exceptions taken in a criminal case, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to section 14. (R. S. c. 94, § 19. 1959, c. 317, § 79.)

Effect of amendment.—The 1959 amendment added the words "in a criminal case" after the word "taken" near the beginning of the section and deleted the words "the provisions of," formerly appearing before "section 14" at the end of this section.

Effective date of 1959 amendment.—See

note to § 5.

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.

Secs. 2, 3. Repealed by Public Laws 1959, c. 317, § 80.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 4. Equity powers.—The superior court shall have jurisdiction to grant appropriate equitable relief in the following cases: (1959, c. 317, § 81)

VIII. Of actions of interpleader notwithstanding the plaintiff is a common carrier and as such has a lien for carriage or storage upon the property which is described in the complaint. No plaintiff in interpleader shall be denied relief by reason of any interest in the fund or other subject matter in dispute. (1959, c. 317, § 82)

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.

Cited in *Swan v. Swan*, 154 Me. 276, 147 A. (2d) 140.

XII. Repealed by Public Laws 1959, c. 317, § 83.

XIII. When counties, cities, towns, school districts, school administrative 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. (1957, c. 443, § 37) (1957, c. 443, § 37. 1959, c. 317, §§ 81-83.)

Effect of amendments.—The 1957 amendment, effective January 16, 1958, added the words "school administrative districts" near the beginning of subsection XIII.

P. L. 1959, c. 317, effective December 1, 1959, amended this section three times. Section 81 rewrote the opening paragraph. Section 82 substituted "actions" for "bills," "plaintiff" for "complainant" and "complaint" for "bills" in subsection VIII and deleted the former third sentence thereof, providing that other requisites for a bill of interpleader were not dispensed with. Section 83 repealed subsection XII. As the rest of the section was not affected by the amendments, it is not set out.

Sec. 9. Repealed by Public Laws 1959, c. 317, § 84.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits

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.

in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 10. Petition for assignment of another justice on a matter. — Within 10 days after the service of a complaint or other application in which equitable relief is sought, the defendant, prior to the filing of his answer, may petition in writing for good cause shown to the chief justice of the supreme judicial court for the assignment of a justice to preside on the matter other than the jus-

tice to whom the original complaint or application was presented. Upon the receipt of such petition the chief justice may assign another justice to hear the matter. (R. S. c. 95, § 10. 1953, c. 368. 1955, c. 392, § 2. 1959, c. 317, § 85.)

Effect of amendments.—The 1959 amendment rewrote this section, which formerly consisted of two paragraphs. The 1955 amendment had made changes in the former second paragraph.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all fur-

ther proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

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

Sec. 11. Repealed by Public Laws 1959, c. 317, § 86.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Secs. 13-28. Repealed by Public Laws 1959, c. 317, § 86.

Editor's note.—Prior to its repeal, § 23 had been amended by P. L. 1959, c. 306, which added provisions as to appeals from the issuance or denial of a tempo-

rary injunction in a case involving or growing out of a labor dispute.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

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.

Sec. 30. Repealed by Public Laws 1959, c. 317, § 86.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Sec. 31. Witnesses not to be heard orally in law court on appeal; when additional evidence to be taken, etc. — 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. (R. S. c. 95, § 31. 1959, c. 317, § 87.)

Effect of amendment.—The 1959 amendment, effective December 1, 1959, repealed the former first sentence of this section, relative to reporting on appeal evidence before the court below.

As this section is mandatory and jurisdictional.

In accord with original. See *Brewster v. Inhabitants of Dedham*, 152 Me. 418, 132 A. (2d) 46.

Sec. 32. Repealed by Public Laws 1959, c. 317, § 88.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Sec. 34. Repealed by Public Laws 1959, c. 317, § 88.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Sec. 35. Summary process when decree is disobeyed; contempt. — 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, counterproof 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 *capias* 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 person 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, save upon questions of jurisdiction; nor shall such appeal suspend the enforcement of any such order or decree unless the court so directs. (R. S. c. 95, § 35. 1959, c. 317, § 89.)

Effect of amendment.—The 1959 amendment, effective December 1, 1959, rewrote the last sentence of this section.

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.

Cited in *Martin v. Maine Savings Bank*, 154 Me. 259, 147 A. (2d) 131; *First Nat. Bank of Boston v. Maine Turnpike Authority*, 153 Me. 131, 136 A. (2d) 699.

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 in-

terest 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. 51. Proceedings in case of death or disability of presiding justice.—If in any criminal case the justice before whom the defendant has been tried is, by reason of death, resignation, sickness, removal or other disability, unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other justice of the superior court may perform those duties, but if such other justice is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial. (R. S. c. 95, § 51. 1959, c. 317, § 90.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Sec. 52. Appeal found to be frivolous.—If an appeal to the law court is found by that court to have been frivolous and intended for delay, treble costs may be allowed to the prevailing party. (R. S. c. 95, § 52. 1959, c. 317, § 91.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

Secs. 53, 54. Repealed by Public Laws 1959, c. 317, § 92.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 10.

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 2nd 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. 1959, c. 230, § 3.)

Effect of amendments.—The 1955 amendment substituted "Veterans day" for "Armistice day."

The 1959 amendment substituted "2nd Monday of September" for "1st Monday of September" in the first sentence of this section.

Effective date of Public Laws 1959, c. 230. — P. L. 1959, c. 230, amending this section, provided in section 5 thereof as follows: "This act shall take effect on January 1, 1961, provided that on or before said date the majority of the following

states, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, New York, New Jersey and Pennsylvania shall have provided by legislation or otherwise for the observance of Labor Day on the same day as provided in this act and provided further that on or before January 1, 1961 the governor, after determining that a majority of the above-named states has provided for the observance of Labor Day on the same day as provided in this act, shall by proclamation proclaim that this act is effective."

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. 3-A. Associate judges.—From and after the effective date of this act the title "recorder" of any municipal court shall be "associate judge" of the said municipal court, provided said recorder is an attorney at law. (1959, c. 42, § 1.)

Editor's note.—P. L. 1959, c. 42, adding this section, provided in section 2 thereof as follows:

"Sec. 2. Amending clause. All municipal

court charters and provisions of statutes are amended to conform with the provisions of this act."