

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

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.

Sections 2 to 37-A. Equity.

Habeas Corpus and Extraordinary Remedies.

Sec. 1. Habeas corpus and extraordinary proceedings.

Cited in *State v. Elwell*, 156 Me. 193, 163 A. (2d) 342.

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 Repealed by Public Laws 1959, c. 317, § 80.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.

XI. Redelivery of goods or chattels. In civil actions 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 civil actions, 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 civil action, and any property or interest conveyed in fraud of creditors. (1961, c. 317, § 326)

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 Repealed by Public Laws 1959, c. 317, § 83.

XIII. Pledging credit of public corporation for purpose not authorized by law. 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 jurisdiction on complaint filed by not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint. (1957, c. 443, § 37. 1961, c. 317, § 327)
(1957, c. 443, § 37. 1959, c. 317, §§ 81-83. 1961, c. 317, §§ 326, 327.)

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.

The 1961 amendment substituted “civil actions” for “suits” near the beginning of subsection XI, substituted “civil actions” for “bills in equity” near the middle of such subsection, substituted “civil action” for “suit at law” near the end of such subsection and substituted “jurisdiction on complaint filed by” for “equity jurisdiction on petition or application of” in subsection XIII.

Sec. 5. Jurisdiction between partners and part owners; extent and effect on other parties.—The court has jurisdiction of cases mentioned in section 4, subsection VII, 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 action, unless he voluntarily becomes a party before final decree, except as otherwise 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 action; 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. (R. S. c. 95, § 5. 1961, c. 317, § 328.)

Effect of amendment.—The 1961 amendment substituted “section 4, subsection VII” for “subsection VII of the preceding section”, “action” for “suit”, and “other-

As the rest of the section was not affected by the amendments, it is not set out.

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.

Subsection XIII cited in *Elwell v. Elwell*, 156 Me. 503, 167 A. (2d) 18.

Subsection XIV cited in *Elwell v. Elwell*, 156 Me. 503, 167 A. (2d) 18.

wise” for “hereinafter”, in the first sentence of this section and substituted “action” for “bill” near the middle of the second sentence.

Sec. 7. Interest of a copartner applied in payment of plaintiff’s debt.—In such action the interest of a copartner in the partnership property may be reached and applied to the payment of the plaintiff’s debt. 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. 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. Any injunction previously issued shall be dissolved upon the filing of such bond. But no provision of section 4, subsection XI, 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 chapter 58, sections 6, 7, 8 and 20, and by chapter 112. (R. S. c. 95, § 7. 1961, c. 317, § 329.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into four sentences, substi-

tuted "action" for "suit" in the present first sentence and made other minor changes throughout the section.

Sec. 8. Repealed by Public Laws 1961, c. 395, § 38.

Effective date.—P. L. 1961, c. 395, § 38, repealing this section, became effective on its approval, June 17, 1961.

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

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 justice 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.

Sec. 12. Verification of complaint.—Verification by the oath of a party for whose benefit the complaint sets forth that it is prosecuted is equivalent to such verification by the plaintiff. (R. S. c. 95, § 12. 1961, c. 317, § 330.)

Effect of amendment.—The 1961 amendment substituted "complaint" for "bill" in this section.

Secs. 13-22. Repealed by Public Laws 1959, c. 317, § 86.

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

Sec. 23. Repealed by Public Laws 1959, c. 317, § 86; c. 378, § 71.

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 temporary 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.

Effective date of Public Laws 1959, c. 378. — Chapter 378, P. L. 1959, repealing this section, became effective on its approval, January 29, 1960.

Secs. 24-28. Repealed by Public Laws 1959, c. 317, § 86.

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. 33. Writs of seizin or execution, etc.—Writs of seizin or execution and all other processes appropriate to civil actions in which equitable relief is sought may be issued by the court to enforce its decrees. (R. S. c. 95, § 33, 1961, c. 317, § 331.)

Effect of amendment.—The 1961 amendment substituted "civil actions in which

equitable relief is sought" for "causes in equity" in this section.

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.

Sec. 36. No injunctions in labor disputes without hearing.

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 civil action. (R. S. c. 95, § 36. 1961, c. 317, § 332.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "suit at law or in equity" at the end of this section.

As the rest of the section was not affected by the amendment, only the last paragraph is set out.

Sec. 37-A. Interlocutory appeals.—Any party may appeal to the law court from an interlocutory order granting or denying a preliminary injunction in a case involving or growing out of a labor dispute, but such preliminary injunction shall not be stayed by the taking of such appeal. Any such appeal shall be heard at the first term of the law court commencing not less than 14 days after the appellant has filed the record on appeal with the clerk of the superior court and furnished the required copies of his brief to the clerk of the law court. Copies of the briefs of other parties shall be furnished to the clerk of the law court not more than 10 days after the appellant's brief has been filed. The law court shall affirm, modify or set aside the order with the greatest possible expedition and shall give such proceedings precedence over all other matters except older matters of the same character. (1959, c. 378, § 72.)

Effective date.—The 1959 act adding this section became effective on its approval, January 29, 1960.

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;

Blackstone v. Rollins, 157 Me. 85, 170 A. (2d) 405; *McGary v. Barrows*, 156 Me. 250, 163 A. (2d) 747.

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 of July; the first 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 first 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. 1961, c. 395, § 39.)

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.

The 1961 amendment, which became effective on its approval, June 17, 1961, substituted "first Monday of September" for

"2nd Monday of September" in the first sentence.

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.

Cross reference.—See c. 108-A, re district courts.

Sec. 2. Qualifications. — No person shall be eligible for appointment as judge or associate 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. Maintaining his principal office for the practice of law within the municipality or municipal court district for which such court is established will be deemed a compliance with any special residential requirement that may apply to that court. (R. S. c. 96, § 2. 1961, c. 210.)

Effect of amendment.—The 1961 amendment inserted "or associate judge" in the

first sentence and added the second sentence.

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.

Process issued by recorder need not contain a statement accounting for absence of judge under Private and Special Laws 1947,

c. 85, § 1, or under this section, since § 6 provides that the signature of the recorder of the court shall be sufficient evidence of his authority without in any way accounting for the absence of the judge of said court. State v. Fleming, 155 Me. 342, 154 A. (2d) 772.

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."

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 neither damages in excess of \$600 nor equitable relief is demanded. 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