

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

**Place in Pocket of Corresponding
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THE MICHIE COMPANY
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Chapter 113.

Proceedings in Court in Civil Actions.

Procedure. General Provisions.

Sec. 38. Demurrers, when filed, joined and not withdrawn; amendments made.—A general demurrer to the declaration may be filed; and in any stage of the pleadings either party may demur and the demurrer must be joined, and it shall not be withdrawn without leave of court and of the opposite party; but the justice shall rule on it and the aggrieved party may except. The justice may allow the plaintiff to amend or the defendant to plead anew at any time. If the law court deems such exceptions frivolous, it shall award treble costs against the party excepting from the time the exceptions were filed. If the declaration is adjudged defective and is amendable, the plaintiff may amend upon payment of costs from the time when the demurrer was filed. If the demurrer is filed at the first term and overruled, the defendant may plead anew on payment of costs from the time when it was filed unless it is adjudged frivolous and intended for delay, in which case judgment shall be entered. At the next term of the court in the county where the action is pending, after a decision on the demurrer has been certified by the clerk of the law court to the clerk of such county and not before, judgment shall be entered on the demurrer unless the costs are paid and the amendment or new pleadings filed on the 2nd day of the term; but by leave of court the time therefor may be enlarged or further time may be granted by the court within which to pay said costs and to file such amendment or new pleadings. (R. S. c. 100, § 38. 1955, c. 239.)

Effect of amendment.—The 1955 amendment rewrote the latter part of the first sentence to appear as the last five words thereof and as the second sentence.

Sec. 60. Verdict set aside by presiding justice.

Motion for new trial does not operate as waiver of exceptions.—Exceptions to rulings of the presiding justice pertaining to the admission of evidence and instruc-

tions to the jury are not waived by a motion for a new trial subsequently addressed to the presiding justice. *Labbe v. Cyr*, 150 Me. 342, 111 A. (2d) 330.

Auditors.

Sec. 89. Auditors; fees.

An auditor is part of the court itself. *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

Auditors empowered to settle facts, etc.
In accord with original. See *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

Sec. 91. Report as evidence.

Auditor's report prima facie evidence, etc.

An auditor's report may be used as evidence by either party and is prima facie evidence, but it may be impeached, con-

trolled or disproved by competent evidence. It is sufficient to warrant a verdict unless impeached or disproved. *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

Juries.

Sec. 104. Judge to charge jury on matters of law but not to express opinion on issues of fact.

I. GENERAL CONSIDERATION.

When failure to note exceptions does not result in waiver of objections.—Where a jury has been given instructions which were plainly erroneous or which justified a belief that the jurors might have been

misled as to the exact issue, or issues which were before them to be determined, the rule that failure to note exceptions results in waiver of objections will not be applied. *Thompson v. Franckus*, 150 Me. 196, 107 A. (2d) 485.

III. OPINIONS UPON ISSUES OF FACT.

Procedural remarks to counsel not opinions.

In accord with original. See Page v. Hemingway Bros. Interstate Trucking Co., 150 Me. 423, 114 A. (2d) 238.

Expressions held not error.

The remark of the presiding justice that

cross-examination designed to show interest was "a bit far fetched," if it could be considered as an expression of opinion, was not on an "issue of fact," such as is referred to in this section. Page v. Hemingway Bros. Interstate Trucking Co., 150 Me. 423, 114 A. (2d) 238.

Witnesses and Evidence. Uniform Judicial Notice of Foreign Law Act.

Sec. 114. Parties, husbands, wives and others interested as witnesses.

Interest defined.—Interest signifies the specific inclination which is apt to be produced by the relation between the witness and cause at issue in the litigation. Page v. Hemingway Bros. Interstate Trucking Co., 150 Me. 423, 114 A. (2d) 238.

The interest of a witness, and its extent, may always be shown on cross-examination, and the limit of such inquiry is within the discretion of the court. Page v. Hemingway Bros. Interstate Trucking Co., 150 Me. 423, 114 A. (2d) 238, holding that exclusion of cross-examination designed to show interest was not abuse of discretion and was not prejudicial.

And taken into consideration by jury.—Any motive which the witness may have, the manner in which the witness testifies and the temptation he might have to color his testimony should be taken into consideration by the jury. The jury has the right in both civil and criminal cases to consider the interest which the witness may have in the result of the litigation in which he is testifying. It is within the province of the jury to pass upon the weight of the testimony given by an interested witness. Page v. Hemingway Bros. Interstate Trucking Co., 150 Me. 423, 114 A. (2d) 238.

Sec. 128. Fees of witnesses.—Witnesses in the supreme judicial court or the superior court or in the probate courts and before a trial justice or a municipal court shall receive \$5 and before referees, auditors or commissioners specially appointed to take testimony or special commissioners on disputed claims appointed by probate courts \$5, or before the county commissioners \$5 for each day's attendance and 8¢ a mile for each mile's travel going and returning home; but the court in its discretion may allow at the trial of any cause, civil or criminal, in said supreme judicial court or the superior court, a sum not exceeding \$50 per day for the attendance of any expert witness or witnesses at said trial, in taxing the costs of the prevailing party, except that the expense of all expert witnesses for the state in murder cases shall be in such amounts as the presiding justice shall allow and shall be paid by the state and charged against the appropriation for the department of the attorney general; but such party or his attorney of record shall first file an affidavit during the term at which such trial is held and before the cause is settled, stating the name, residence, number of days in attendance and the actual amount paid or to be paid each expert witness in attendance at such trial. No more than \$5 per day shall be allowed or taxed by the clerk of courts in the costs of any suit for the per diem attendance of a witness, unless the affidavit herein provided is filed, and the per diem is determined and allowed by the presiding justice (R. S. c. 100, § 129. 1947, c. 20. 1955, c. 412, § 2.)

Effect of amendment.—The 1955 amendment, which was made effective June 1, 1956, increased the fees throughout the section.

Sec. 133. Accounts not inadmissible because hearsay or self-serving.

A record account book copied from day to day from motel registration cards was properly admitted into evidence under this section, where the presiding justice could

properly find that the entries were made in good faith in the regular course of business and before suit. Ouelette v. Pageau, 150 Me. 159, 107 A. (2d) 500.

Sec. 146. Photostatic and microfilm reproductions admissible.—If any business, institution, bank, trust company, member of a profession or calling, or any department or agency of government, in the regular course of his or its business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of his or its business or activity has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction, or copy, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction or copy is likewise admissible in evidence if the original reproduction or copy is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original. This section shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence. (R. S. c. 100, § 146. 1955, c. 264.)

Effect of amendment.—The 1955 amendment rewrote this section.

Official Court Reporter.

Sec. 188. Official court reporters, their appointment, duties, salary and expenses.—The chief justice of the supreme judicial court may appoint not more than 11 official court reporters to serve for a term of 7 years, who shall report the proceedings in the supreme judicial court and in the superior court and who shall be officials of the court to which they may from time to time be assigned by the chief justice, and be sworn to the faithful discharge of their duties, and each of whom shall receive from the state a salary of \$5,750 per year. They shall take full notes of all oral testimony and other proceedings in the trial of causes, either at law or in equity, including the charge of the justice in all trials before a jury and all comments and rulings of said justice in the presence of the jury during the progress of the trial, as well as all statements and arguments of counsel addressed to the court, and during the trial furnish for the use of the court or either of the parties a transcript of so much of their notes as the presiding justice may direct. They shall also furnish a transcript of so much of the evidence and other proceedings taken by them as either party to the trial requires, on payment therefor by such party at the rate of 20¢ for every 100 words. One of said official court reporters designated for the purpose shall perform such clerical services as may be required of him by the chief justice who may allow him reasonable compensation for such clerical services for which he shall be reimbursed.

(1955, c. 480.)

Effect of amendment.—The 1955 amendment increased the yearly salary of official court reporters, provided for in the first sentence of the first paragraph, from

\$5,000 to \$5,750. As the second, third and fourth paragraphs were not changed by the amendment, they are not set out.

Chapter 113-A.

Interpleader Compact.

Sec. 1. Approval of compact.—The following interpleader compact is hereby approved, ratified, adopted and entered into by this state as a party state to take effect between this state and any other state or states as defined in said compact when entered into in accordance with the terms of said compact by said