

MAINE STATE LEGISLATURE

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TITLE 16

COURT PROCEDURE—EVIDENCE

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CHAPTER 1

WITNESSES

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SUBCHAPTER I

GENERAL PROVISIONS

Sec.

1. Applicability of provisions to executors, administrators or heirs.

§ 1. Applicability of provisions to executors, administrators or heirs

Sections 53, 54, 154, 201 and 557 do not apply to cases where, at the time of taking testimony or at the time of trial, the party prosecuting or the party defending, or any one of them, is an executor or an administrator or is made a party as heir of a deceased party; except in the following cases:

- 1. Deposition or testimony at former trial.** The deposition of a party or his testimony given at a former trial may be used at any trial after his death if the opposite party is then alive, and in that case the latter may testify.

2. If representative party is a party. In all cases in which an executor, administrator or other legal representative of a deceased person is a party, such party may testify to any facts, admissible upon the rules of evidence, happening before the death of such person. When such person so testifies, the adverse party is neither excluded nor excused from testifying in reference to such facts and any such representative party or heir of a deceased party may testify to any fact, admissible upon general rules of evidence, happening after the decease of the testator, intestate or ancestor, and in reference to such matters the adverse party may testify.

3. Nominal parties. If the representative party is nominal only, both parties may be witnesses. If the adverse party is nominal only and had parted with his interest, if any, during the lifetime of the representative party's testator or intestate, he is not excluded from testifying if called by either party. In an action against an executor or administrator, if the plaintiff is nominal only, or having had an interest, disposed of it in the lifetime of the defendant's testator or intestate, neither party to the record is excused or excluded from testifying.

4. Account books of deceased as evidence. In an action by or against an executor, administrator or other legal representative of a deceased person in which his account books or other memoranda are used as evidence on either side, the other party may testify in relation thereto.

5. Heirs. In actions where an executor, administrator or other legal representative is a party and the opposite party is an heir of the deceased, said heir may testify when any other heir of the deceased testifies at the instance of such executor, administrator or other legal representative.

6. Representative party to testify if action brought by him. In all actions brought by the executor, administrator or other legal representative of a deceased person, such representative party shall not be excused from testifying to any facts admissible upon general rules of evidence, happening before the death of such person, if so requested by the opposite party. Nothing herein shall be so construed as to enable the adverse party to testify against the objection of the plaintiff when the plaintiff does not voluntarily testify.

R.S.1954, c. 113, § 119.

SUBCHAPTER II

QUALIFICATIONS, PRIVILEGES AND CREDIBILITY

Sec.

51. Showing of interest or bias.
52. Mentally ill party.
53. Parties, husbands, wives and others as interested witnesses.
54. Attestation of wills and instruments not affected.
55. Religious belief affects credibility only; atheists may testify.
56. Prior conviction as affecting credibility.

§ 51. Showing of interest or bias

If in the trial of a civil case there is a conflict of oral testimony or the contents of a written statement are denied or controverted by the person involved therein, it is competent to show in testimony the interest or bias of the person testifying orally or the person preparing the written statement.

R.S.1954, c. 113, § 120.

§ 52. Mentally ill party

The rules of evidence which apply to actions by or against executors or administrators apply in actions where a person shown to the court to be mentally ill is solely interested as a party.

R.S.1954, c. 113, § 121; 1959, c. 242, § 8.

§ 53. Parties, husbands, wives and others as interested witnesses

No person is excused or excluded from testifying in any civil action by reason of his interest in the event thereof as party or otherwise, except as otherwise provided, but such interest may be shown to affect his credibility, and the husband or wife of either party may be a witness.

R.S.1954, c. 113, § 114; 1961, c. 317, § 372.

§ 54. Attestation of wills and instruments not affected

Nothing in section 53 affects the law relating to the attestation of the execution of last wills and testaments or of any other instrument which the law requires to be attested.

R.S.1954, c. 113, § 116.

§ 55. Religious belief affects credibility only; atheists may testify

No person is an incompetent witness on account of his religious belief but he is subject to the test of credibility. A person who does not believe in the existence of a Supreme Being may testify under solemn affirmation and is subject to the pains and penalties of perjury.

R.S.1954, c. 113, § 113.

§ 56. Prior conviction as affecting credibility

No person is incompetent to testify in any court or legal proceeding in consequence of having been convicted of an offense, but conviction of a felony, any larceny or any other crime involving moral turpitude may be shown to affect his credibility.

R.S.1954, c. 113, § 127.

SUBCHAPTER III

ATTENDANCE

Sec.

101. Subpoenas for witnesses.

102. Failure of witness to appear; contempt; liability.

§ 101. Subpoenas for witnesses

The clerks of the several courts and justices of the peace may issue subpoenas for witnesses to attend before any court or before persons authorized to examine witnesses, to give evidence concerning any pending matter.

R.S.1954, c. 113, § 112; 1963, c. 402, § 175.

§ 102. Failure of witness to appear; contempt; liability

When a person, summoned and obliged to attend before any judicial tribunal, fails to do so without reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge or justice of such tribunal may issue a *capias* to apprehend and bring such delinquent before him, and he shall be punished by a fine of not more than \$100 and costs of attachment, and committed until the same and costs are paid.

R.S.1954, c. 113, § 123.

SUBCHAPTER IV

EXAMINATION

Sec.

151. Oaths.

152. Affirmation.

153. Testimony to be taken orally in open court.

154. Impeaching of own witness.

155. Refusal to answer.

§ 151. Oaths

A person to whom an oath is administered shall hold up his hand unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One believing any other than the Christian religion may be sworn according to the ceremonies of his religion.

R.S.1954, c. 113, § 125.

§ 152. Affirmation

Persons conscientiously scrupulous of taking an oath may affirm as follows: "I affirm under the pains and penalties of perjury," which affirmation is of the same force and effect as an oath.

R.S.1954, c. 113, § 126.

§ 153. Testimony to be taken orally in open court

In all civil actions the testimony of witnesses shall be taken orally in open court, unless otherwise provided by rule.

R.S.1954, c. 113, § 21; 1959, c. 317, § 162.

§ 154. Impeaching of own witness

When a party either nominal or real or the husband or wife of a party is used as a witness by an adverse party, testimony may be introduced by such adverse party to contradict or discredit him.

R.S.1954, c. 113, § 118.

§ 155. Refusal to answer

When a witness in court refuses to answer such questions as the court allows to be put, he shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months.

R.S.1954, c. 113, § 124.

SUBCHAPTER V

IMMUNITIES

Sec.

201. Self-incrimination; waiver.

§ 201. Self-incrimination; waiver

No defendant shall be compelled to testify in any action when the cause of action implies an offense against the criminal law on his part. If he offers himself as a witness, he waives his privilege of not criminating himself, but his testimony shall not be used in evidence against him in any criminal prosecution involving the same subject matter.

R.S.1954, c. 113, § 115; 1961, c. 317, § 373.

SUBCHAPTER VI

FEES

Sec.

251. Fees of witnesses.

252. Fees of police officer or constable.

253. Witness not obligated unless fees paid or tendered.

§ 251. Fees of witnesses

Witnesses in the Supreme Judicial Court, the Superior Court, the District Court or in the probate courts 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. 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. Such party or his attorney of record shall first file an affidavit within 30 days after entry of judgment 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 civil action for the per diem attendance of a witness, unless the affidavit is filed, and the per diem is determined and allowed by the presiding justice.

R.S.1954, c. 113, § 128; 1955, c. 412, § 2; 1961, c. 317, § 375; 1963, c. 402, § 176.

§ 252. Fees of police officer or constable

No police officer or constable paid a salary or paid upon a per diem basis by a municipality shall receive any fee as a complainant or witness, or for making an arrest or for attendance at court but shall be reimbursed by such municipality for his actual costs of arrest and actual expenses of travel and attendance. Whenever any fines or penalties are imposed by any court in any proceeding in which such a police officer or constable is a complainant or a witness, said court may tax costs for such complainant or witness in the usual manner to be paid by the county treasurer upon approval of the county commissioners to the municipality employing such police officer or constable.

R.S.1954, c. 113, § 129.

§ 253. Witness not obligated unless fees paid or tendered

No person is obliged to attend any court as a witness in a civil action or at any place to have his deposition taken unless his legal fees for travel to and from the place and for one day's attendance are first paid or tendered. His fees for each subsequent day's attendance must be paid at the close of the preceding day if he requests it.

R.S.1954, c. 113, § 130; 1961, c. 317, § 376.