

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2236

S. P. 709

In Senate, February 20, 1976

(Approved by a Majority of the Committee on Reference of Bills pursuant to Joint Order S. P. 635, as amended.) Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Costs in Contested Cases and Dispositions
in Probate Court.

Be it enacted by the People of the State of Maine, as follows:

18 MRSA § 551 is repealed and the following enacted in place thereof:

§ 551. Costs in contested cases in probate court

In all contested cases in the original or appellate court of probate, costs may be allowed to either party, including reasonable witness fees, cost of dispositions, hospital records or medical reports and attorney's fees, to be paid by the other, or to either or both parties, to be paid out of the estate in controversy, as justice requires. Executions may be issued therefor as in courts of common law.

Depositions may be taken in probate court by either party as in any other court in this State. Parties may also serve interrogatories upon each other and the procedure in both instances shall be governed by the provisions of the Maine Rules of Civil Procedure for discovery generally.

STATEMENT OF FACT

This bill provides statutory authorization for the probate court to allow costs to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees. By *In Re Will of Fenwick*, 348 A. 2d 12 (Me., 1975), the law court stated that it could find no

statutory authority or case law to permit the award of attorney's fees as part of the costs awarded by the probate court. This bill provides this authority, in line with long established practice in Maine's probate courts, provides clarification as to what types of other costs the probate court may award and clarifies the procedure concerning depositions and interrogatories in the probate court.