

# MAINE STATE LEGISLATURE

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# FIFTY-NINTH LEGISLATURE.

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HOUSE.

No. 121.

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## STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
EIGHTY.

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AN ACT to regulate the practice in equity proceed-  
ings.

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*Be it enacted by the Senate and House of Representatives  
in Legislature assembled, as follows :*

SECTION 1. The supreme judicial court shall al-  
2 ways be open in each county, except upon days  
3 upon which by law no court shall be holden, and  
4 in the first instance, except as herein provided, all  
5 hearings shall be had, all orders and decrees made,  
6 and all process issued by a single justice of said  
7 court, and said court may establish rule days for  
8 the transaction of business relating to equity  
9 cases.

SECT. 2. All causes in equity shall be begun by  
2 bill of complaint filed in the clerk's office, upon

3 which subpoena shall issue as matter of course,  
4 returnable to the first day of the next term of the  
5 court for the county, or any such rule day, in either  
6 case holden within fourteen days next after the is-  
7 sue thereof, to be served ten days at least next be-  
8 fore the return day thereof, or by order of the  
9 court such subpoena may be made returnable on  
10 any day in or out of term, and be served as direct-  
11 ed in such order; or such bill may be inserted in a  
12 writ of attachment. In all cases service shall be  
13 made by copy of the bill, and of the subpoena or  
14 writ of attachment, and in all particulars not here-  
15 in provided, service of process in equity process  
16 juries shall be made in like manner as service of  
17 other civil process.

SECT. 3. When process is made returnable to  
2 any regular term of the court, the respondent shall  
3 appear within the first three days of the term,  
4 otherwise on the return day thereof; and in default  
5 thereof, on motion of the complainant, filed on any  
6 day after such time for appearance has elapsed,  
7 the bill shall be taken pro confesso as matter of  
8 course; but such decree may, for good cause  
9 shown on motion of the respondent, be opened  
10 within ten days after it is made, when the return  
11 day is out of any regular term, or if process is re-

12 turnable to a term at any time during the continu-  
13 ance thereof, and in such case the court shall fix a  
14 time for making defence.

SECT. 4. Defence shall be made by answer, plea-  
2 or demurrer, within ten days next after the time  
3 for appearance shall have elapsed, or within the  
4 time ordered by the court, as provided in the pre-  
5 ceding section; but for good cause shown the court-  
6 may enlarge the time therefor in either case, and  
7 in default of such defence the bill shall be taken  
8 pro confesso, on motion of complainant filed on  
9 any day after such default, as matter of course.  
10 Any demurrer shall be accompanied by a certificate  
11 of counsel that it is not intended for delay.

SECT. 5. The complainant shall file the general  
2 replication within five days after notice has been  
3 served on him or his counsel, that answer or plea  
4 has been filed, but such time may be enlarged on  
5 such terms as the court shall order, or the bill  
6 dismissed on motion filed by respondent at any  
7 time after said five days, to dismiss for want of  
8 prosecution.

SECT. 6. Thirty days after issue joined shall be  
2 allowed for taking testimony, or the court, on  
3 motion of either party, may fix a time for com-  
4 plainant's testimony, to be followed by respondent's

5 testimony, and testimony of complainant in rebut-  
6 tal, each within a fixed time, and in either case the  
7 court may enlarge the time for good cause shown.

SECT. 7. When the time for taking testimony in  
2 chief, in answer, and in rebuttal is fixed in succes-  
3 sive periods, as provided in the foregoing section, at  
4 the close of each period as finally enlarged, the  
5 testimony taken therein shall be filed, opened by  
6 the clerk and submitted to the inspection of the  
7 other party, and when the time for taking testi-  
8 mony shall be finally closed, either party may, on  
9 motion, as matter of course, have publication  
10 thereof, and the cause may be set down by the  
11 court, on motion of either party, to be heard on  
12 bill, answer or plea and proofs, at any time after  
13 publication; and on like motion it may be set down  
14 to be heard on bill and demurrer at any time after the  
15 demurrer is filed, and on motion of complainant it may  
16 be set down to be heard on bill and answer or plea, at  
17 any time after defence is made by the filing thereof.

SECT. 8. The justice before whom such hearings  
2 shall be had shall have full power to decide any  
3 motion or cause so heard, to make and enter such  
4 order and decree, as shall seem just and proper to  
5 him, in accordance with the established principles  
6 of equity jurisprudence, subject to appeal and  
7 exceptions as hereinafter provided.

SECT. 9. From all final decrees of such justice  
2 an appeal shall lie to the next law court to be held  
3 in the district where the cause is pending in favor  
4 of either party aggrieved thereby, which shall be  
5 claimed by an entry on the clerk's docket within  
6 ten days after such decree is signed, entered and  
7 filed, of which notice shall forthwith be given to  
8 the parties or their counsel by the clerk, and the  
9 appellant shall within the first two days of said law  
10 term, or if such appeal is taken within ten days  
11 next before said term, on or before the first Mon-  
12 day thereof, enter said appeal, and furnish printed  
13 copies of the case. Such appeals shall be heard at  
14 the term to which they are taken, and determined  
15 as other cases before the law court, unless other-  
16 wise agreed, or for good cause ordered by the law  
17 court, and the law court shall on such appeal,  
18 affirm, reverse or modify the decree of the court  
19 below, or remand the cause for further proceed-  
20 ings, as it shall deem proper upon its findings of  
21 facts, and upon the established principles of equity  
22 jurisprudence, all cases in which appeals or excep-  
23 tions are taken shall remain on the docket of the  
24 court below, marked law, and decree shall be  
25 entered therein by a single justice, in accordance  
26 with the certificate and opinion of the law court,

27 and judgment shall be as of the entry of such  
28 decree.

SECT. 10. If an appeal is taken from a final  
2 decree, the justice making the same may also make  
3 such order for the appointment of receivers, for  
4 injunction and prohibition or for continuing the  
5 same in force, as are needful for the protection of  
6 the rights of the parties, or proper according to  
7 the usual courts of equity proceedings in such  
8 cases, until the appeal shall be determined by the  
9 law court; subject however to be modified or  
10 annulled by such law court, while the appeal is  
11 pending before it, or upon its decision thereof.

SECT. 11. From all interlocutory decrees, upon  
2 hearing upon the bill and answer or plea, or upon  
3 the pleadings and proofs, or bill and demurrer, a  
4 like appeal lies, but it shall not suspend the execu-  
5 tion of such decree or proceedings thereunder, or  
6 present to the law court any question not involved  
7 in such decree. And upon any appeal from a final  
8 decree, all previous orders and decrees which shall  
9 not have been before decided on, appeal shall be  
10 open to revision.

SECT. 12. Upon a hearing in any cause in equity  
2 in either manner mentioned in the preceding sec-  
3 tion, the justice hearing the same may report the

4 cause to the next law court held within the district  
5 in which the cause is pending, if he is of opinion  
6 that any question of law is involved of sufficient  
7 importance or doubt to justify the same, or the  
8 parties agree thereto, and the cause shall be en-  
9 tered and copies furnished by the complainant, and  
10 the same shall be heard and decided by said law  
11 court in like manner and with like results as is here-  
12 in provided in case of appeals.

SECT. 13. If any party intending to appeal shall  
2 fail to do so by accident or mistake, he may at the  
3 session of such law court to which such appeal  
4 would properly lie, apply to it for leave to take  
5 such appeal, which may be granted by it on such  
6 terms as shall appear to it to be just and equitable,  
7 one of which may be that the same shall be argued  
8 in writing in such time as the court may order.

SECT. 14. Either party aggrieved thereby may  
2 take exceptions to any ruling of law made by a  
3 single justice in any matter, the same to be accom-  
4 panied only by such parts of the case as are neces-  
5 sary to a clear understanding of the questions  
6 raised thereby. Such exceptions shall be claimed  
7 on the docket within the time allowed for appeal,  
8 and shall be made up, allowed and filed within the  
9 same time, unless further time is granted by the



10 court or by agreement of parties. In all other  
11 respects such exceptions shall be taken, entered in  
12 the law court, and there heard and decided in like  
13 manner as appeals are with the same power in the  
14 single justice to make orders for injunction and  
15 prohibition, and in the law court to make orders  
16 and decrees pending the same and upon decision  
17 thereof, save that no question of fact shall be open  
18 to the law court. And upon request of either party  
19 the justice hearing the cause shall give separate  
20 findings of law and fact.

SECT. 15. Every order and decree shall bear  
2 date upon the day on which it is filed and entered,  
3 and the day of such filing and entering shall be  
4 entered by the clerk upon the docket and on the  
5 decree.

SECT. 16. No process for the enforcement of a  
2 final decree save for the appointment of receivers,  
3 for injunction or prohibition, or for continuing the  
4 same, shall issue until the lapse of ten days from  
5 the entry of such decree, unless all parties waive  
6 an appeal by entry on the clerk's docket, or by  
7 writing filed in the cause, or consent to the issue  
8 thereof in like manner.

SECT. 17. Any hearing may be had or order or  
2 decree passed out of the county in which a cause

3 is pending by agreement, or order of the court,  
4 and the justice hearing the same shall transmit to  
5 the clerk of such county any order or decree made  
6 thereupon, but no such hearing shall be had or or-  
7 der or decree made without consent of, or reasona-  
8 ble notice to, the counsel for all parties, save where  
9 it is a matter of course or when order or decree may  
10 pass without hearing, as herein provided. Argu-  
11 ments in any matter may be presented in writing  
12 with like effect as if made orally.

SECT. 18. Oral evidence taken in the court  
2 below shall on appeal be reported. No oral evi-  
3 dence shall be exhibited before the law court as a  
4 part of the case on appeal, but it may authorize  
5 additional evidence to be taken when the same has  
6 been omitted by accident or mistake on such terms  
7 as it shall deem proper.

SECT. 19. The court may in its discretion frame  
2 issues of fact, in equity causes upon application of  
3 either party, to be tried in the county where the  
4 cause is pending, and verdicts thereon may be set  
5 aside on motion, by the court below or the law  
6 court, as is now provided by law for other ver-  
7 dict, and in no other manner. If not set aside by  
8 the court below, it shall make a decree, and shall  
9 also set forth in writing its rulings of law upon the

10 facts so found, and exceptions shall lie thereto and  
11 to any rulings of law in the cause in like manner,  
12 and with like results, as in case of other exceptions  
13 herein provided for

SECT. 20. Writs of seizin or execution as well as  
2 all other process appropriate to causes in equity  
3 may be issued by the court.

SECT. 21. Preliminary injunctions may be granted  
2 upon the complainant filing bond to pay all dam-  
3 ages and costs caused thereby, if he shall finally  
4 be found not entitled to such injunction, unless a  
5 single justice on motion to dissolve the same, and  
6 hearing on the merits thereof, shall refuse to dis-  
7 solve it. Such damages and costs shall be awarded  
8 by the court on motion, but if not so awarded  
9 before final decree they may be determined in a  
10 suit on such bond; and such injunction may be  
11 granted to either party on hearings, upon oral evi-  
12 dence, or on affidavits on such notice and with  
13 such time for evidence as the court shall direct.  
14 No preliminary injunction shall be granted to either  
15 party unless his pleadings shall contain an applica-  
16 tion therefor, and such application may be brought  
17 up at any time during the pendency of the suit on  
18 motion. Perpetual injunctions may be granted

19 by the court or any justice thereof making final  
20 decree.

SECT. 22. Whenever any party shall complain, in  
2 writing, and under oath, that the process of the  
3 court has been disregarded or disobeyed, summary  
4 process shall issue by order of any justice of the  
5 court, requiring the person or party so alleged to  
6 have disregarded or disobeyed such process, to ap-  
7 pear on a day certain and show cause why he  
8 should not be adjudged guilty of contempt, and  
9 such process shall fix a time for answer to the com-  
10 plaint, and may fix a time for hearing on oral testi-  
11 mony or affidavits, or both, or successive terms for  
12 proof, counter proof, and rebuttal, or the time for  
13 hearing and manner of proof may be subsequently  
14 ordered upon the return day thereof, or thereafter  
15 on notice. The court may, for good cause, enlarge  
16 the time for hearing on any proof. If the person  
17 or party so summoned shall not appear as directed,  
18 or shall fail to make answer, or proof, or attend the  
19 hearing at the time appointed therefor, as enlarged,  
20 or if he is found, upon hearing, to have been guilty  
21 of such disregard or disobedience, he shall be  
22 adjudged in contempt, and a writ of attachment  
23 shall issue upon such adjudication, upon which he  
24 may be arrested and punished by fine or imprison-

25 ment, or other manner according to the usual  
26 course of equity proceedings, or the court may al-  
27 low him to give bail to appear at a time certain, at  
28 which such punishment may be imposed. But  
29 when a second time found guilty of contempt in  
30 disregarding or disobeying the same order, no bail  
31 shall be allowed. No appeal shall lie from any or-  
32 der or decree for such punishment, nor shall ex-  
33 ceptions thereto be allowed save upon questions of  
34 jurisdiction, nor in any case shall such exceptions  
35 suspend the enforcement of any such order or de-  
36 cree, unless the court shall so direct. Like pro-  
37 ceedings may be had on failure to appear or answer  
38 to a bill asking for discovery.

SECT. 23. Exceptions in equity causes frivolous  
2 in their nature, and intended for delay when certi-  
3 fied by the justice allowing them to do so, may be  
4 certified to the chief justice and argued in like  
5 manner as such exceptions in causes at common  
6 law, and the law court, or the justice allowing the  
7 same, subject to revisions by the law court, may  
8 impose multiple costs in such case.

SECT. 24. In cases where a respondent is absent  
2 from, and is not served with process within the  
3 state and jurisdiction, is sustained by attachment  
4 of his property, or finding property of a copart-

5 nership or co-tenancy within the state, process on  
6 final decree shall be delayed for sixty days after  
7 decree, unless the complainant shall give bond as  
8 provided in chapter eighty-two, section four of the  
9 revised statutes, if the respondent shall not have  
10 appeared, and if in any case at any time before the  
11 time for process to issue upon final decree without  
12 appearance of any respondent, he shall appear and  
13 satisfy the court that such failure to appear was  
14 unavoidable from want of actual notice, or other  
15 inevitable accident, and without his fault, the decree  
16 shall be opened, notwithstanding any limitations of  
17 time for the performance of any act herein limited.

SECT. 25. In case of such decree against such  
2 absent respondent not appearing by the record to  
3 have been served with process within the state and  
4 no appearance before final process, he may have a  
5 review within one year after final decree, of right  
6 with stay or supersedeas of such process except for  
7 injunction or prohibition, upon filing bond, as now  
8 provided by statute in reviews. Such review shall  
9 be commenced by filing a copy of the record in the  
10 clerk's office, in the county where the decree was  
11 rendered, and a written petition setting forth the  
12 facts and identifying the cause and judgment and

13 praying for notice, which shall be ordered by the  
14 court when inspection of the record shows that  
15 the petitioner is entitled to such review, and the  
16 petitioner's time for defence herein provided shall  
17 run from the filing of the copy and petition. Such  
18 notice shall be served as ordered by the court.  
19 Reviews may also be granted on petition when-  
20 ever without fault of the party against whom  
21 decree was ordered by fraud, accident or mistake,  
22 justice has not been done, *provided*, such petition  
23 shall be filed within two years after final decree, or  
24 at any time within three months after an absent  
25 defendant shall first have had knowledge of the  
26 action with a copy of the record, and notice may  
27 be ordered and served as therein directed, with like  
28 rights of stay or supersedeas as above provided in  
29 all cases where the review does not lie of right.  
30 The times for answering, if answer has been filed,  
31 shall run from the granting of the review. All  
32 provisions of the statute relating to reviews con-  
33 cerning attachments, levies and set off, so far as  
34 applicable and practicable, shall apply to reviews  
35 of equity causes.

SECT. 26. Nothing herein contained shall abridge  
2 the power of the court to hold all interlocutory or-  
3 ders and decrees subject to revision, at any time

4 before final decree, save as they shall have been  
5 decided on appeal, or as is otherwise provided here-  
6 in in relation to matters of fact established by a  
7 verdict, or found by a justice without appeal.

SECT. 27. The court shall have full power to make  
2 all proper rules consistent with the provisions of  
3 statutes, regulating the practice in equity causes,  
4 and to simplify proceedings, discourage delays, les-  
5 sen the expense and burdens of litigation, and fur-  
6 ther expedite decisions, but no rule of court now  
7 existing is repealed hereby, except in so far as it  
8 conflicts herewith.

SECT. 28. All acts and parts of acts inconsistent  
2 herewith are hereby repealed. The provisions here-  
3 of shall apply to all pending causes so far as they  
4 may be applicable thereto, the court fixing the time  
5 within which any proceeding therein next there-  
6 after in order shall be performed, on motion of  
7 either party, and other proceedings to follow as  
8 herein provided.

SECT. 29. This act shall take effect when approved.



# STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
March 15, 1880. }

Reported by Mr. STROUT, and ordered printed under rule.

ORAMANDAL SMITH, *Clerk.*