

# MAINE STATE LEGISLATURE

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# SIXTIETH LEGISLATURE.

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HOUSE.

No. 53.

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## STATE OF MAINE.

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

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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  
2 always be open in each county for equity proceed-  
3 ings, except upon days upon which by law no  
4 court is to be holden, and in the first instance,  
5 except as herein provided, all hearings shall be  
6 had, all orders and decrees made, and all process  
7 issued by a single justice of said court, except  
8 upon appeal or exceptions as hereinafter pro-  
9 vided, and said court shall establish rule days for  
10 the return of subpœnas and the transaction of  
11 business relating to equity cases.

SECT. 2. All causes in equity shall be begun by  
2 bill of complaint filed in the clerk's office, upon  
3 which subpœna shall issue as matter of course,  
4 returnable to the first day of the next term of the  
5 court for the county, or upon any such rule day,  
6 which in either case shall be next holden within  
7 fourteen days after the issue of such subpœna, and  
8 shall be served ten days at least next before the  
9 return day thereof; or by order of the court such  
10 subpœna may be made returnable on any day in or out  
11 of term, and be served as directed in such order;  
12 or such bill may be inserted in a writ of attach-  
13 ment, upon which property may be attached in  
14 the same manner as upon writs at common law.  
15 In all cases service shall be made by copy of the  
16 bill, subpœna or writ of attachment, and in all  
17 particulars not herein provided, service of any  
18 process in equity shall be made in like manner as  
19 service of other civil process. The bill of com-  
20 plaint shall state the material facts and circum-  
21 stances relied on by the complainant, with brevity,  
22 omitting immaterial and irrelevant matters, and  
23 may be amended or reformed at the discretion of  
24 the court, with or without terms, at any time be-  
25 fore final decree is entered in said cause.

SECT. 3. If discovery is sought it may be by  
2 bill, with interrogatories annexed thereto, for the  
3 purpose of such discovery. Answers thereto  
4 shall be made within ten days after the return  
5 day of such bill, or within such time as the  
6 court shall order, and questions arising thereon  
7 shall be determined by the rules established by the  
8 supreme judicial court as herein provided, and in  
9 the absence thereof by the rules applicable to bills  
10 of discovery in equity procedure.

SECT. 4. 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, other-  
4 wise he shall appear on the return day of such pro-  
5 cess; and in default of such appearance, on motion  
6 of the complainant in writing, the bill shall be taken  
7 pro confesso as matter of course, at any time within  
8 ten days after such time for appearance has elapsed;  
9 but such decree may, for good cause shown, on  
10 motion of the respondent, be opened within ten  
11 days after it is made, and in such case the court  
12 shall fix the time for making a defence.

SECT. 5. 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  
6 court may in either case enlarge the time therefor.  
7 In default of such defence the bill shall be taken pro  
8 confesso, as matter of course, on motion of com-  
9 plainant, in writing, filed on any day after such  
10 default. Any demurrer shall be accompanied  
11 by a certificate of counsel that it is not in-  
12 tended for delay. All bills shall be signed by the  
13 complainant, his agent or attorney, and all answers  
14 thereto shall be signed by the respondent, his agent  
15 or attorney, and the person signing the same shall  
16 make oath that the facts therein stated are true,  
17 according to his best knowledge, information and  
18 belief.

SECT. 6. 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 may  
6 be dismissed for want of prosecution on motion  
7 filed by respondent at any time after said five days,  
8 or at the expiration of the time ordered by the  
9 court for filing such replication.

SECT. 7. Thirty days after issue joined shall be  
2 allowed for taking testimony, or the court on mo-  
3 tion of either party, may fix the time for complain-

4 ant'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. 8. 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,  
4 at the close of each period or the enlargement  
5 thereof, the testimony taken therein shall be filed,  
6 opened by the clerk and submitted to the inspec-  
7 tion of the other party, and when the time for tak-  
8 ing testimony shall be finally closed, either party  
9 may on motion, as matter of course, have publica-  
10 tion thereof, and on motion of either party the cause  
11 may be set down by the court, to be heard on bill,  
12 answer or plea and proofs, at any time after publi-  
13 cation; and on like motion it may be set down to  
14 be heard on bill and demurrer at any time after  
15 the demurrer is filed, and on motion of complain-  
16 ant it may be set down to be heard on bill and  
17 answer or plea, at any time after defence is made  
18 by the filing thereof.

SECT. 9. The justice before whom such hearings  
2 shall be had shall have full power to decide, and  
3 shall in the first instance decide any motion or  
4 cause so heard, and shall make and enter such

5 order and decree, as shall seem just and proper to  
6 him, and in accordance with the established prin-  
7 ciples of equity jurisprudence, subject to appeal  
8 and exceptions as hereinafter provided. Evidence  
9 may be taken by deposition or orally, in presence  
10 of the court or by an examiner, if the court shall  
11 so direct. But all oral evidence shall be taken  
12 and reduced to writing by a stenographer, and his  
13 copy shall be used as testimony in the cause the  
14 same as a deposition.

SECT. 10. From all final decrees of such justice  
2 an appeal by either party aggrieved thereby shall  
3 lie to the next law court to be held in the district  
4 where the cause is pending, which shall be claimed  
5 by an entry on the clerk's docket within ten days  
6 after such decree is signed, entered and filed, and  
7 notice thereof has been given by the clerk to the  
8 parties or their counsel, and the appellant shall  
9 within the first two days of said law term, or if  
10 such appeal is taken within ten days next before  
11 said term on or before the first Monday thereof,  
12 enter said appeal, and furnish printed copies of the  
13 case. Such appeals shall be heard at the term to  
14 which they are taken, and shall be determined as  
15 other cases before the law court, unless otherwise  
16 agreed, or the law court shall for good cause order

17 a further time for the hearing thereof, and the law  
18 court shall on such appeal, affirm, reverse or modify  
19 the decree of the court below, or remand the  
20 cause for further proceedings, as it shall deem  
21 proper. All cases in which appeals or exceptions  
22 are taken shall remain on the docket of the court  
23 below marked law, and decree shall be entered  
24 therein by a single justice, in accordance with the  
25 certificate and opinion of the law court.

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

SECT. 12. 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. 13. 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 entered  
9 and copies furnished by the complainant, and the  
10 same shall be heard and decided by said law court  
11 in like manner and with like results as is herein  
12 provided in case of appeals.

SECT. 14. 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 on such terms  
6 as shall appear to it to be just and equitable.

SECT. 15. Either party aggrieved may take ex-  
2 ceptions to any ruling of law made by a single  
3 justice in any matter, the same to be accompanied  
4 only by such parts of the case as are necessary to

5 a clear understanding of the questions raised there-  
6 by. Such exceptions shall be claimed on the docket  
7 within the time allowed for appeal, and shall be  
8 made up, allowed and filed in the time provided  
9 therefor unless further time is granted by the court  
10 or by agreement of parties. In all other respects  
11 such exceptions shall be taken, entered in the law  
12 court, and there heard and decided in like manner  
13 as appeals, with the same power in the single  
14 justice to make orders for injunction and prohibi-  
15 tion, and the protection of the rights of the parties,  
16 and in the law court to make orders and decrees  
17 pending the same and upon decision thereof; *pro-*  
18 *vided*, that no question of fact shall be open to the  
19 law court. And upon request of either party the  
20 justice hearing the cause shall give separate find-  
21 ings of law and fact.

SECT. 16. 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. 17. 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 in like man-  
8 ner to the issue thereof.

SECT. 18. 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 where the cause is pend-  
6 ing any order or decree made at such hearing, but  
7 no such hearing shall be had or order or decree  
8 made without consent of, or reasonable notice to,  
9 the counsel for all parties, save where it is a mat-  
10 ter of course or when the order or decree ought to  
11 pass without hearing, as herein provided. Argu-  
12 ments in any matter may be presented in writing  
13 or orally, as the court shall direct.

SECT. 19. Oral evidence taken in the court  
2 below shall on appeal be reported. No witnesses  
3 shall be heard orally 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 in such man-  
7 ner and on such terms as it shall deem proper.

SECT. 20. The court may, in its discretion, and  
2 upon the application of either party, frame issues

3 of fact in equity causes to be tried by a jury in the  
4 county where such cause is pending. A single  
5 justice may confirm any verdicts rendered upon  
6 such issues of fact, and enter appropriate decrees  
7 thereon in the cause in which the same are  
8 rendered, or such justice may set aside such ver-  
9 dicts, and render such decrees in the cause as  
10 equity may require, the same as if such issues of  
11 fact had not been framed. In all causes where  
12 such issues of fact are framed and tried, an appeal  
13 may be taken, and exceptions had to rulings of law,  
14 as herein before provided, and upon such appeal or  
15 exception the law court shall have power to con-  
16 firm or set aside the verdicts rendered in the cause,  
17 or order a new trial of such issues of fact, and  
18 make such disposition of the cause as the equity of  
19 the case shall demand. All such appeals and ex-  
20 ceptions shall be taken, heard and determined as  
21 provided by this act.

SECT. 21. 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. 22. Preliminary injunctions may be granted  
2 by a single justice upon the complainant filing a  
3 bond to pay all damages and costs caused thereby,  
4 if he shall finally be found not entitled to such in-

5 junction, or unless a single justice on motion to  
6 dissolve the same and hearing on the merits  
7 thereof, shall refuse to dissolve it. Such damages  
8 and costs shall be awarded by the court on motion,  
9 but if not so awarded before final decree they may  
10 be determined in a suit on such bond. Such in-  
11 junction may also be granted to either party on  
12 hearing, without bond being given, upon oral evi-  
13 dence, or on affidavits, and upon such notice and  
14 with such time for evidence as the court shall di-  
15 rect. No preliminary injunction shall be granted  
16 to either party unless his pleadings shall contain  
17 an application therefor, and such application may  
18 be made at any time during the pendency of the  
19 suit on motion. Perpetual injunctions may be  
20 granted by the court or any justice thereof making  
21 final decree.

SECT. 23. Whenever any party shall complain in  
2 writing, and under oath, that the process, decree or  
3 order of the court has been disregarded or diso-  
4 beyed, summary process shall issue by order of any  
5 justice of the court, requiring the person or persons  
6 so alleged to have disregarded or disobeyed such  
7 process, to appear on a day certain and show  
8 cause why he should not be adjudged guilty of  
9 contempt, and such process shall fix a time for

10 answer to the complaint, and may fix a time for hear-  
11 ing on oral testimony or affidavits, or both, or may fix  
12 successive times for proof, counter proof, and proof in  
13 rebuttal, or the time for hearing and manner of proof  
14 may be subsequently ordered upon the return day  
15 or thereafter. The court may, for good cause,  
16 enlarge the time for such hearing. If the per-  
17 son or party so summoned shall not appear as  
18 directed, or shall fail to make answer, or proof, or  
19 attend the hearing at the time appointed therefor,  
20 as enlarged, or if he is found, upon hearing, to have  
21 been guilty of such disregard or disobedience, he  
22 shall be adjudged in contempt, and shall be pun-  
23 ished by such reasonable fine or imprisonment as  
24 the case shall demand. When such party shall  
25 purge himself of his contempt the justice may re-  
26 mit such fine and imprisonment, or any portion  
27 thereof. The court may allow such offender to  
28 give bail to appear at a time certain, at which such  
29 punishment may be imposed, if he shall continue  
30 in contempt. But when a second time found guilty  
31 of contempt in disregarding or disobeying the same  
32 order, no bail shall be allowed. No appeal shall  
33 lie from any order or decree for such punishment,  
34 nor shall exceptions thereto be allowed save upon  
35 questions of jurisdiction, nor in any case shall such

36 exceptions suspend the enforcement of any such  
37 order or decree, unless the court shall so direct.

SECT. 24. When any justice deems any excep-  
2 tions allowed by him, or any appeal in any proceed-  
3 ing in equity, provided for by this act, to be frivo-  
4 lous and intended for delay, he may so certify on  
5 the motion of the party not excepting, and such  
6 exceptions and appeal and the record connected  
7 therewith shall be transmitted to the chief justice,  
8 and shall be argued in writing on both sides within  
9 thirty days thereafter, unless the judge transmit-  
10 ting the same shall, for good cause, enlarge the  
11 time, and shall be considered and decided by the  
12 justices of said court as soon as may be, and the  
13 decision certified to the clerk of the county where  
14 the cause is pending; and if the decision shall be  
15 adverse to the party taking such appeal or excep-  
16 tions, treble costs may be allowed the prevailing  
17 party.

SECT. 25. In cases where a respondent is absent  
2 from, and is not served with process within the  
3 state, jurisdiction shall be sustained by attachment  
4 of his property, or the property of a copartnership  
5 of which he is a member within this state. Such  
6 notice shall be given such absent respondent as

7 the court shall order. Process on final decree  
8 shall be delayed for three months after such decree  
9 is made. If within that time such respondent shall  
10 appear and satisfy the court that his failure to  
11 appear upon the return day of the bill of complaint,  
12 arose from want of notice or other good cause, the  
13 decree shall be opened and the cause proceed and  
14 be heard in the same manner as if such respondent  
15 had seasonably appeared and answered thereto.  
16 Process on final decree shall be delayed for three  
17 months after decree, if the respondent shall not  
18 have appeared. If in any case at any time before  
19 the time for process to issue upon final decree  
20 without appearance of any respondent, he shall  
21 appear and satisfy the court that such failure to  
22 appear was from want of actual notice, or other  
23 reason satisfactory to the court, the decree shall  
24 be opened, notwithstanding any limitations of time  
25 for the performance of any act herein limited.

SECT. 26. In case of such decree against such  
2 absent respondent who does not appear by the  
3 record to have been served with process within  
4 the state and has made no appearance before final  
5 process, he shall have a review within one year  
6 after final decree, as of right with stay or super-



7 sedeas of such process. Such review shall be  
8 commenced by filing a copy of the record in the  
9 clerk's office, in the county where the decree was  
10 rendered, and a written petition setting forth the  
11 facts and identifying the cause, decree and judg-  
12 ment, and praying for notice, which shall be ordered  
13 by the court. Such notice shall be served as  
14 ordered by the court. Upon the granting of such  
15 review proceeding shall be had as hereinbefore  
16 provided. Reviews may also be granted on peti-  
17 tion whenever without fault of the party against  
18 whom decree was ordered by fraud, accident or  
19 mistake, justice has not been done, *provided*, the  
20 petition therefor shall be filed within two years after  
21 final decree, and notice may be ordered and served  
22 with like rights of stay or supersedeas as herein  
23 provided. Upon granting the review the court  
24 may fix a time within which the next proceeding  
25 shall be had.

SECT. 27. Nothing herein contained shall abridge  
2 the power of the court to hold all interlocutory  
3 orders and decrees subject to revision, at any time  
4 before final decree, except when they shall have  
5 decided on appeal.

SECT. 28. It shall be the duty of the court to  
2 make all proper rules for the regulation of the

3 practice in equity causes, necessary to simplify  
4 proceedings, discourage delays and lessen the ex-  
5 pense of litigation, and shall have full power for  
6 that purpose; but no rule of court now existing is  
7 repealed hereby, except so far as it is inconsistent  
8 herewith.

SECT. 29. All acts and parts of acts inconsis-  
2 tent herewith are hereby repealed.



# STATE OF MAINE.

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In HOUSE OF REPRESENTATIVES, }  
February 9, 1881. }

Reported by Mr STROUT, from the Committee on Judiciary,  
and ordered printed under Joint Rule.

ORAMANDAL SMITH, *Clerk.*