

# MAINE STATE LEGISLATURE

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# SIXTIETH LEGISLATURE.

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HOUSE.

No. 151.

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[NEW DRAFT.]

## 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 provided,  
9 and said court shall establish rule days for the re-  
10 turn of subpœnas and the transaction of business  
11 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, re-  
4 turnable to the first day of a term of court for the  
5 county where it is filed, or upon a rule day, which  
6 in either case shall be holden within sixty days  
7 after the filing of such bill, and such subpœna shall  
8 be served at least fourteen days before the return  
9 day thereof; or by order of the court such subpœna  
10 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 and  
14 which shall be made returnable as writs at com-  
15 mon law. In all cases service shall be made by  
16 copy of the subpœna and bill, or writ of attach-  
17 ment. The bill of complaint shall state the mate-  
18 rial facts and circumstances relied on by the com-  
19 plainant, with brevity, omitting immaterial and  
20 irrevelant matters, and may be amended or re-  
21 formed at the discretion of the court, with or with-  
22 out terms, at any time before final decree is entered  
23 in said cause.

SECT. 3. If discovery is sought it may be by bill,  
2 with or without interrogatories annexed thereto,  
3 for the purpose of such discovery. Answers thereto

4 shall be made within thirty days after the return  
5 day of such bill, or within such time as the court  
6 shall order, and questions arising thereon shall be  
7 determined by the rules established by the supreme  
8 judicial court as herein provided, and in the  
9 absence thereof by the rules applicable to bills of  
10 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,  
4 otherwise he shall appear on the return day of such  
5 process; and in default of such appearance, on  
6 motion of the complainant in writing, the bill shall  
7 be taken pro confesso as matter of course, at the  
8 expiration of ten days after the filing of such mo-  
9 tion, but such decree for good cause shown, on mo-  
10 tion of the respondent, may 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 thirty 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

8 pro confesso, as matter of course, on motion of  
9 complainant in writing, filed on any day after such  
10 default, and served on the respondent. But such  
11 decree may be opened on motion of respondent  
12 within ten days thereafter as provided in section  
13 four of this act. All answers shall be signed by  
14 the respondent and sworn to by him if the com-  
15 plainant in his bill asks for an answer upon oath,  
16 otherwise it may be signed by the respondent, his  
17 agent or attorney, and in such case shall have no  
18 effect as evidence, except to cast the burden of  
19 proof upon the plaintiff.

SECT. 6. The complainant shall file a replication  
2 within fifteen days after notice has been served on  
3 him or his counsel that answer or plea has been  
4 filed, but such time may be enlarged on such terms  
5 as the court shall order, or the bill may be dismissed  
6 for want of prosecution on motion filed by res-  
7 pondent at any time after said fifteen days, or at  
8 the expiration of the time ordered by the court for  
9 filing such replication.

SECT. 7. Sixty 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 tes-  
5 timony, and testimony of complainant in rebuttal,

6 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  
11 cause may be set down by the court, 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  
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 the expiration of  
18 the time fixed for taking testimony.

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 appointed by the  
11 court. But all oral evidence shall be taken and  
12 reduced to writing by a stenographer or an exam-  
13 iner, and his copy, approved by the judge or certi-  
14 fied to by the examiner, shall be used as testimony  
15 in the cause the same as a deposition.

SECT. 10. 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. Said  
4 appeal shall be claimed by an entry on the docket  
5 of the court from which the appeal is taken, within  
6 ten days after such decree is signed, entered and  
7 filed, and notice thereof has been given by such  
8 clerk to the parties or their counsel. The appel-  
9 lant shall enter such appeal and furnish written or  
10 printed copies of the case on the first day of said  
11 law term, and for good cause shown the law court  
12 may enlarge the time for furnishing such copies.  
13 Such appeals shall be heard at the term to which  
14 they are taken, unless otherwise agreed, or the law  
15 court shall for good cause order a further time for  
16 the hearing thereof, and the law court shall on  
17 such appeal, affirm, reverse or modify the decree

18 of the court below, or remand the cause for fur-  
19 ther proceedings, as it shall deem proper. All  
20 cases in which appeals or exceptions are taken  
21 from a final decree shall remain on the docket of  
22 the court below, marked law, and decree shall be  
23 entered therein by a single justice, in accordance  
24 with the certificate and opinion of the law court.

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

SECT. 12. An appeal may be claimed and taken  
2 in like manner from any interlocutory decree, or  
3 order, but such appeal shall not suspend any pro-  
4 ceedings under such decree or order, or in the  
5 cause, and shall not be taken to the law court until  
6 after final decree. Upon an appeal from a final  
7 decree, all previous decrees and orders shall be  
8 open for revision, reversal, or approval.



SECT. 13. Upon a hearing in any cause in equity, 2 the justice hearing the same may report the cause 3 to the next law court held within the district in 4 which the cause is pending, if he is of opinion that 5 any question of law is involved of sufficient import- 6 ance or doubt to justify the same, and the parties 7 agree thereto. The cause shall be entered and 8 copies furnished by the complainant, and the same 9 shall be heard and decided by said law court in 10 like manner and with like results as is herein pro- 11 vided in case of appeals.

SECT. 14. If any party intending to appeal shall 2 within the time limited therefor fail to do so by ac- 3 cident or mistake, he may within thirty days after 4 the entry of the decree apply to any justice for 5 leave to take such appeal, which may be granted 6 on such terms as shall appear to it to be just and 6 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 on such exceptions. And upon request  
20 of either party the justice hearing the cause shall  
21 give separate findings of law and fact. The allow-  
22 ance and hearing of exceptions shall not suspend  
23 the other proceedings in the cause.

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 on a motion for an inter-  
2 locutory decree or order may be had, or such or-  
3 der or decree passed, out of the county in which  
4 the cause is pending, on notice to the adverse  
5 party therefor. And the justice hearing the same  
6 shall transmit to the clerk of the county where the  
7 cause is pending any order or decree made at such  
8 hearing, but no trial before a jury upon issues  
9 framed therefor or final hearing of the cause, shall  
10 be had out of the county where the bill is pending,  
11 without the consent of the parties.

SECT. 19. All evidence before the court below  
2 or an abstract thereof, approved by the justice  
3 hearing the case, shall on appeal be reported. No  
4 witnesses shall be heard orally before the law court  
5 as a part of the case on appeal, but it may author-  
6 ize additional evidence to be taken when the same  
7 has been omitted by accident or mistake, or dis-  
8 covered after the hearing, in such manner and on  
9 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, or such justice may set aside such verdicts,  
8 and render such decrees as equity may require, as  
9 if such issues of fact had not been framed. In all  
10 causes where such issues of fact are framed and  
11 tried, an appeal may be taken, and exceptions had  
12 to rulings of law, as herein before provided, and  
13 upon such appeal or exception the law court shall  
14 have power to confirm or set aside the verdicts ren-  
15 dered in the cause, or order a new trial of such  
16 issues of fact, and make such disposition of the  
17 cause as the equity of the case shall demand. All  
18 such appeals and exceptions shall be taken, heard  
19 and determined as 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, to enforce its decrees.

SECT. 22. Preliminary injunctions may be granted  
2 by a single justice upon the complainant filing a  
3 bond with sufficient sureties conditioned to pay  
4 all damages and costs caused thereby, if he shall  
5 finally be found not entitled to such injunction,  
6 unless a single justice on motion to dissolve the  
7 same and hearing on the merits thereof, shall refuse  
8 to dissolve it. Such damages and costs shall be

9 awarded by the court on motion, but if not so  
10 awarded before final decree they may be deter-  
11 ined in a suit on such bond. Such injunction may  
12 also be granted to either party on hearing, without  
13 bond being given upon oral evidence, depositions  
14 or affidavits, and upon such notice and with such  
15 time for pleading, evidence and hearing as the  
16 court shall direct. No preliminary injunction shall  
17 be granted to either party unless his pleadings  
18 shall contain an application therefor; but an in-  
19 junction may be granted pending the suit in proper  
20 cases therefor, upon motion and hearing. Perpet-  
21 ual injunctions may be granted by the court or  
22 any justice thereof making 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, which is not for the payment of  
4 money only, has been disregarded or disobeyed,  
5 summary process shall issue by order of any justice  
6 of the court, requiring the person so alleged to have  
7 disregarded or disobeyed such process, to appear  
8 on a day certain and show cause why he should not  
9 be adjudged guilty of contempt, and such process  
10 shall fix a time for answer to the complaint, and  
11 may fix a time for hearing on oral testimony depo-  
12 sitions or affidavits, or may fix successive times for

13 proof, counter proof, and proof in rebuttal, or the  
14 time for hearing and manner of proof may be sub-  
15 sequently ordered upon the return day or there-  
16 after. The court may, for good cause, enlarge the  
17 time for such hearing. If the person so summoned  
18 shall not appear as directed, or shall not 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 the court may issue a  
23 capias to bring him before it to receive sentence,  
24 and may punish him by such reasonable fine or im-  
25 prisonment as the case may require. The court  
26 may allow such offender to give bail to appear at a  
27 time certain, at which such punishment may be im-  
28 posed, if he shall continue in contempt. But when  
29 a second time found guilty of contempt in disre-  
30 garding or disobeying the same order or decree, no  
31 bail shall be allowed. When such person shall,  
32 purge himself of his contempt the justice may  
33 remit such fine or imprisonment or any portion  
34 thereof. No appeal shall lie from any order or de-  
35 cree for such punishment, nor shall exceptions  
36 thereto be allowed, save upon questions of juris-  
37 diction, nor in any case shall such exceptions sus-

38 .pend the enforcement of any such order or decree,  
39 unless the court shall so direct.

SECT. 24. When any justice deems any excep-  
2 tions allowed by him, or any appeal in any pro-  
3 ceeding in equity, provided for by this act, to be  
4 frivolous and intended for delay, he may so certify  
5 on 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 case of such a decree an absent  
2 respondent whose property has been attached and  
3 who does not appear by the record to have been  
4 served with process within the state and has made  
5 no appearance before final process, he shall have a  
6 review within one year after final decree, as of  
7 right with stay or supersedeas of such process.

8 The respondent may in such case apply to any jus-  
9 tice by petition setting forth the grounds for such  
10 review, whereupon if such justice shall order  
11 reasonable notice to the other party, to appear at  
12 time and place named therein, to show cause why  
13 such review should not be granted, when such  
14 review is granted the justice may prescribe the  
15 time in which the respondents defense shall be  
16 made. Reviews may also be granted on petition  
17 whenever without fault of the party against whom  
18 decree was ordered by fraud, accident or mistake,  
19 justice has not been done; *provided*, the petition  
20 therefor shall be filed within six years after final  
21 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. 26. 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 been decided on appeal.

SECT. 27. 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. 28. This act shall not affect pending cases.

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

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## STATE OF MAINE.

In HOUSE OF REPRESENTATIVES, }  
March 7, 1881. }

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

ORAMANDAL SMITH, *Clerk.*