

MAINE STATE LEGISLATURE

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Sixty-Sixth Legislature.

SENATE.

No. 179.

STATE OF MAINE.

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

AN ACT to amend Sections sixteen and seventeen of Chapter
one hundred and two of the Revised Statutes, relating to
Writs of Mandamus.

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

SECTION 1. Section sixteen of chapter one hundred and
2 two of the Revised Statutes is hereby amended by strik-
3 ing out the words "at any time in any county as justice
4 shall require" in the sixth line of said section, and insert-
5 ing in lieu thereof the words 'as hereinafter provided; but
6 in all cases where exceptions are alleged to any rulings,
7 findings or decrees made upon such petition, the case
8 shall be proceeded with as if no exceptions had been taken,
9 until a decision shall be had and the peremptory writ

10 shall have been ordered, so that the overruling of such
11 exceptions would finally dispose of the case, which shall
12 then be certified to the chief justice of said court as pro-
13 vided in the following section.' So that said section as
14 amended shall read as follows :

'Section 16. A petition for a writ of mandamus may
16 be presented to a justice of the Supreme Judicial Court
17 in any county in term time or vacation, who may, upon
18 notice to all parties, hear and determine the same, or may
19 reserve questions of law arising thereon, upon exceptions
20 or otherwise, for the determination of the full court,
21 which may hear and determine the same as hereinafter
22 provided ; but in all cases where exceptions are alleged
23 to any rulings, findings or decrees made upon such peti-
24 tion, the case shall be proceeded with as if no exceptions
25 had been taken, until a decision shall be had and the
26 peremptory writ shall have been ordered, so that the
27 overruling of such exceptions would finally dispose of the
28 case, which shall then be certified to the chief justice of
29 said court as provided in the following section. If on
30 such hearing such writ is ordered, it may be issued from
31 the clerk's office in any county and be made returnable as
32 the court directs.'

SECT. 2. Section seventeen of said chapter one hundred
2 and two is hereby amended by adding thereto the fol-
3 lowing :

'After judgment and decree that the peremptory writ be
5 granted the justice of said court before whom the pro-

6 ceedings are pending, shall forthwith certify to the chief
7 justice for decision, all exceptions which may be filed and
8 allowed to any rulings, findings or decrees made at any
9 stage of the proceedings. The excepting party shall,
10 within fifteen days thereafter, forward to the chief justice
11 his written argument upon such exceptions and shall,
12 with said fifteen days, furnish the adverse party, or his
13 attorney, with a copy of such argument; the adverse
14 party shall, within fifteen days after receipt of such copy
15 forward his written argument in reply, to the chief justice,
16 and thereupon, the justices of said court shall consider
17 said cause immediately, and decide thereon and transmit
18 their decision to the clerk of the county where the petition
19 is pending, and final judgment shall be entered accord-
20 ingly. If the judgment is in favor of the petitioner, the
21 peremptory writ of mandamus shall thereupon be issued.
22 So that said section seventeen as amended shall read as
23 follows :

‘Section 17. When a writ of mandamus issues, the
25 person required to make return thereto shall make his
26 return to the first writ, and the person suing the writ
27 may by an answer traverse any material facts contained
28 in such return, or may demur. If the party suing the
29 writ maintains the issue on his part, his damages shall be
30 assessed, and a judgment rendered that he recover the
31 same with costs, and that a peremptory writ of mandamus
32 be granted; otherwise the party making the return shall
33 recover costs. No action shall be maintained for a false

34 return to a writ of mandamus. After judgment and
35 decree that the peremptory writ be granted the justice
36 of said court before whom the proceedings are pending
37 shall forthwith certify to the chief justice for decision,
38 all exceptions which may be filed and allowed to any
39 rulings, findings or decrees made at any stage of the
40 proceedings. The excepting party shall, within fifteen
41 days thereafter, forward to the chief justice his written
42 argument upon such exceptions and shall, within said
43 fifteen days, furnish the adverse party, or his attorney,
44 with a copy of such argument; the adverse party shall,
45 within fifteen days after receipt of such copy forward his
46 written argument in reply to the chief justice; and there-
47 upon the justices of said court shall consider said cause
48 immediately, and decide thereon and transmit their deci-
49 sion to the clerk of the county where the petition is
50 pending, and final judgment shall be entered accordingly.
51 If the judgment is in favor of the petitioner, the per-
52 emptory writ of mandamus shall thereupon be issued.

SECT. 3. This act shall take effect when approved.

STATE OF MAINE.

IN SENATE, March 17, 1893.

Reported by Mr. SEIDERS, from Committee on the Judiciary, and laid
on table to be printed under joint rules.

KENDALL M. DUNBAR, *Secretary.*