

# MAINE STATE LEGISLATURE

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# L A W S

OF THE

## STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....  
VOL. I.  
.....

Published according to a resolve of the State, passed  
March 8, 1821.

BRUNSWICK.

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.....  
1821.

equally among the Jurors who shall attend and serve ; and a fine not exceeding eighty dollars, on any town Clerk or Selectman, who shall be guilty of any fraud, either in practising on the Jury box previously to a draft, or in the drawing a Juror, or in returning the name of any Juror into the box, which had been fairly drawn out, and drawing or substituting some other one in his stead, or in any other way whatsoever; and all such fines which the Selectmen, Constable, town Clerk, Sheriff or Clerk of a Court, shall incur by virtue of this Act, for any neglect, shall be to the use of the county in which the offender dwelt at the time of the neglect, to be recovered by indictment, information, or an action brought by the Treasurer of the county, before any Court having jurisdiction of the offence: *Provided*, The action shall be brought within twelve months after the offence shall have been committed; such fines or amercements as shall be ordered or imposed on towns for any neglect of their duties as before specified, shall be to the use of the county in which the offending town may be ; and all fines and forfeitures for any of the frauds, by Town Clerks or Selectmen as above mentioned, shall be recovered by action of debt, in any Court having jurisdiction thereof; one moiety thereof to be and enure to the State, the other moiety to him or them who shall prosecute and recover the same.

Limitation of actions for penalty.

[Approved February 14, 1821.]

## CHAPTER LXXXV.

An Act prescribing the mode of taking Depositions.

In what cases and circumstances depositions may be taken.

SEC. 1. **B**E it enacted by the Senate and House of Representatives, in Legislature assembled, That when any civil cause shall be pending in any Court, or before any Justice of the Peace in this State, and the writ, original summons, or complaint therein shall have been served on the defendant, or be pending before Referees or Arbitrators, and either party in the cause shall think it necessary to have the testimony therein of any person who shall live more than thirty miles from the place of trial by a Court, Jury, Referees or Arbitrators, or shall be bound on a voyage to sea before, or

be about to go out of the State, and not to return in time for the trial; or shall be so sick, infirm or aged, as not to be able to travel and attend at the trial; then the deposition of such person may be taken before any Justice of the Peace not being of counsel or attorney to either party, or interested in the event of the cause: *Provided*, Notice be given, and proceedings be had as hereinafter directed.

SEC. 2. *Be it further enacted*, That when either party in the cause shall apply to a Justice of the Peace to take such deposition, he shall give notice to the adverse party, if in this State, in substance as follows, to wit:

On application to a Justice, notice to be given to adverse party if in this State.

(L. s.) — ss. To — of —, in the county of — [addition.] Greeting.

Whereas A. B. of — in the county of — [addition] has requested me to take the deposition of — of — in the county of —, [addition] to be used in an action of — pending between you and the said A. B. and the house of — in —, and the — day of — in the year of our Lord — at — of the clock in the —noon are appointed the time and place for the said deponent to testify what he knows relating to the said action: You are hereby notified that you may then and there be present, and put such interrogatories as you may think fit.—Given under my hand and seal at —, on the — day of — in the year of our Lord —. — Justice of the Peace.

Form of notice.

*Provided nevertheless*, That the notification to the adverse party may be issued by the Justice before whom the deposition is to be taken, or by any other Justice of the Peace within the State, *mutatis mutandis*, at the election of the party, at whose request such deposition is to be taken; and *Provided further*, That notice may be given verbally, by the Justice taking said deposition, or notice may be dispensed with, if the adverse party or his attorney shall, in writing, waive the same. And when the adverse party is not present at the taking of such deposition, the Justice taking the same shall certify that he was duly notified. And the service of this notification on the said adverse party, or his attorney, by leaving an attested copy thereof at his last and usual place of abode, allowing time for his attendance after being notified, not less than at the rate of one day, Lord's

Notice may be issued by the Justice taking the deposition, or any other Justice.

Justice may give verbal notice, or it may be waived in writing.

Justice must certify notice.

Manner of giving notice.

days exclusive, for every twenty miles travel; and such service being proved by the affidavit of a disinterested witness, or by the return on said notification of the Sheriff or his deputy of the county, or of the Constable of the town where the said adverse party or his attorney shall live, shall be deemed sufficient notice. But no person for the purposes of this Act, shall be considered as the attorney of another, until such attorney shall have endorsed the writ; or endorsed his name on the summons to be left with the defendant in the cause; or until he shall have appeared for his principal in the cause, before the Justice of the Peace, Referees or Arbitrators, or in the Court where the said action shall be pending, or shall have given notice in writing, stating he is attorney in the cause, to the other party or his attorney. And where there are several plaintiffs or defendants in any action, such notice to one of them, or the notice aforesaid to be given by the said Justice, given to one of them, shall be deemed sufficient.

Who to be considered as an attorney to be notified.

Where there are several plaintiffs or defendants notice to one good.

Deponent to be cautioned and sworn before being examined.

Deposition to be written by Justice, deponent or a disinterested person.

Justice to hand it into Court, &c.

or make a formal caption, and seal it up.

SEC. 3. *Be it further enacted,* That every person deposing as aforesaid, shall first be cautioned and sworn or affirmed to testify the truth, the whole truth and nothing but the truth, and being afterwards carefully examined shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the Justice taking the deposition, or by the deponent, or some disinterested person in the presence of the said Justice; and the deposition so taken shall be retained by such Justice until he deliver the same, together with a certificate of the reasons for taking such deposition, and of notice, if any, with his own hand to the Court, Justice, Referees or Arbitrators, for which it may have been taken, or shall, together with such certificate as aforesaid, be sealed up by him, and directed to such Court, Justice, Referees or Arbitrators, and remain under his seal until opened in Court, or by such Justice, Referees or Arbitrators: which certificate shall be in substance as follows, to wit:

\_\_\_\_\_ ss. \_\_\_\_\_ On the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, the aforesaid deponent was examined and cautioned, and sworn (or affirmed) agreeably to law, to the deposition aforesaid by him subscribed, taken at the request of \_\_\_\_\_, and to be used in an action of \_\_\_\_\_ now

pending between him and — before [here name the Court, Justice, Referees or Arbitrators]; and the adverse party was, or was not present (as the case may be) the said deponent living more than thirty miles from the place of trial, or being about to go out of the State and not to return in time for the trial, or being bound on a voyage to sea, or being so sick, or being so infirm, or being so aged as to be unable to travel and attend at the trial, is the cause of taking this deposition. — Justice of the Peace.

SEC. 4. *Be it further enacted*, That such Justice when requested by the party applying as aforesaid, shall issue his summons to the deponent in substance as follows, to wit:

Form of summons to deponent.

(L.S.) — ss. To — of — in the county of — [addition] Greeting.

Whereas A. B. of — in the county of — [addition] has requested me to take your deposition, to be used in an action now pending between him and —, and the house of — in — and the — day of — in the year of our Lord — at — of the clock in the — noon, are appointed the time and place for taking the same deposition: You are hereby required in the name of the State of Maine, then and there to appear to testify what you know relating to the said action. Hereof fail not. Given under my hand and seal at — the — day of — in the year of our Lord —. — Justice of the Peace.

Which summons when served, and the service thereof proved as before prescribed, in the case of the said notification, shall be deemed good and sufficient; and if any deponent so summoned shall neglect to appear at the time and place appointed in the summons, and having tendered to him or her thirty four cents for his or her time, and four cents a mile for his or her travel, computing from the deponent's said place of abode to the place of caption, and back, such deponent shall be subject to like actions forfeitures and attachment as are provided by law where witnesses are summoned to Court and do not appear.

Manner of serving such summons, to be effectual.

Penalty for non attendance of such witness.

SEC. 5. *Be it further enacted*, That if on the trial of any cause, either party shall make it appear probable to the Court, that it will not be in his power to produce the witnesses, there testifying on the appeal or review of the cause, and shall move that their testimony be taken down in writing,

In certain cases testimony may be taken in open Court, to be used on appeal, &c.

it shall be done by the Clerk of the said Court, or by such Justice of the Peace as the Court shall appoint; and if any appeal or review be had, such testimony may be used, if it shall appear to the satisfaction of the Court that the witnesses are then living more than thirty miles from the place of trial, or dead, or gone out of the State, or on a voyage to sea, or so sick, infirm or aged as then to be unable to travel and attend at the trial and not otherwise. And in every case (as

But not to be used if the witnesses can be produced.

Depositions taken out of the State may be admitted or rejected at the discretion of the Court.

Provided adverse party be notified, if within 20 miles.

Judicial courts may grant dedimus for taking depositions, on such terms as they may deem proper.

Depositions in perpetuam, how taken and certified.

is to be preferred to depositions, when it can be reasonably had) where the deposition of a witness shall have been taken, it shall not be used in the cause at the trial, by the Court, Justice, Referees or Arbitrators, if the adverse party shall then make it appear that the reasons for taking the said deposition no longer exist; but that the witness is within the said distance, and able personally to appear.

SEC. 6. *Be it further enacted*, That all depositions taken out of this State before any Justice of the Peace, Public Notary or other person legally empowered to take depositions in the State or County where such depositions shall be taken and certified, may be admitted as evidence in any civil action; or rejected at the discretion of the Court: *Provided nevertheless*, That if the adverse party or his attorney shall live within twenty miles of the place of caption, no deposition shall be admitted, unless it shall appear by the caption or affidavit, that such adverse party or his attorney was notified of the time and place of caption.

SEC. 7. *Be it further enacted*, That the Justices of the Supreme Judicial Court and of the Circuit Court of Common Pleas, may grant a dedimus potestatem to have depositions taken, either within or without the State, in any action, suit or controversy pending in said Courts respectively, on such terms and conditions as they from time to time shall prescribe.

SEC. 8. *Be it further enacted*, That where any deposition shall be taken in perpetual remembrance of a thing, it shall be done by two Justices of the Peace, quorum unus, and they shall cause such as they know to be interested, to be duly notified of the time and place of the caption, if within twenty miles thereof, or in this State; and if without that

distance, their attorney, if any they have; and the deposition being reduced to writing by one of the Justices or by the deponent in their presence and subscribed, the said Justices shall administer the oath and certify the caption and the names of all persons, whom they notified of the taking thereof, in substance as follows, to wit:

State of Maine.

\_\_\_\_\_ ss. Town of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ personally appeared before us, the subscribers, two Justices of the Peace in and for the county of \_\_\_\_\_ quorum unus, the aforesaid deponent, and after being carefully examined, and duly cautioned to testify the whole truth and nothing but the truth, made oath, or affirmed, that the foregoing deposition by him subscribed is true. Taken at the request of \_\_\_\_\_ to be preserved in perpetual remembrance of the thing. And we duly notified A. B., C. D., E. F., being all the persons living within twenty miles of this place of caption, or in this State, we knew to be interested in the property to which the said deposition relates; and \_\_\_\_\_ attended [if any person so notified did attend] or \_\_\_\_\_ we not knowing any persons, living within twenty miles of said place of caption, or within the State, interested in the property whereto the aforesaid deposition relates, did not notify any persons to attend.

Form of the caption.

And the same deposition and caption shall within ninety days be recorded in the office of the Register of Deeds in the county where the land lies, if the deposition respected real estates; and if the same respected personal estates, then in the said office of the county where the person lives for whose use such deposition was taken; and such certificate shall be certified on the deposition, and the same deposition so certified, or a copy of the said record, may in the case of the death of such deponent, absence out of the State, or inability to attend the Court as aforesaid, be used as evidence in any cause to which it may relate.

Deposition to be recorded within 90 days in county where land lies,

or where person lives for whom taken if it relates only to personal estate.

Certified copy of such deposition to be legal proof, if deponent cannot attend.

Persons scrupulous of taking an oath may affirm.

Form of affirmation.

SEC. 9. *Be it further enacted,* That every person who shall be conscientiously scrupulous of taking an oath and who on any lawful occasion shall be required to take an oath as a witness in any cause, shall instead of the usual form be permitted to affirm in these words, to wit: "I, A.B. do affirm un-



Wilful and false affirmation punished as perjury.

der the pains and penalties of perjury," which affirmation shall be deemed of the same force and effect, as his or her oath would have been on the same occasion, taken in the usual form. And if any person making such affirmation shall be convicted wilfully, falsely and corruptly to have testified in any matter or thing, he or she so offending shall incur the same penalties and forfeitures as by the laws of this State are enacted against persons convicted of wilful and corrupt perjury.

Same penalties for false swearing in giving depositions as for false swearing in open Court.

SEC. 10. *Be it further enacted*, That if any person shall wilfully, falsely and corruptly swear or affirm, in giving or making any deposition or affidavit in this Act provided to be taken, he or she shall incur the same penalties, as if the testimony had been taken in open Court, and wilful perjury committed in giving the same.

[Approved March 15, 1821.]

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## CHAPTER LXXXVI.

An Act for the relief of Persons who are scrupulous of taking Oaths.

Certain persons, scrupulous of taking an oath, may take and subscribe an affirmation.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That whenever any person shall be required to take or subscribe any oath, before he enters on the discharge of any office, place or business, or on any other lawful occasion, and such person shall be conscientiously scrupulous of taking or subscribing an oath, he or she shall be permitted to make or subscribe affirmation, instead of the oath which is or may be by law prescribed, changing such part of any such oath as ought to be changed, conformably to the Constitution of this State.

False and corrupt affirmation, to be punished as perjury.

SEC. 2. *Be it further enacted*, That if any person shall wilfully, falsely and corruptly, make or subscribe any such affirmation as aforesaid, he or she shall be liable to the same pains and penalties as are or may be by law provided against persons who wilfully, falsely and corruptly take or subscribe the oath for which such affirmation is substituted.

[Approved February 19, 1821.]