

MAINE STATE LEGISLATURE

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CHAPTER 91.

Supreme Judicial Court. Superior Court. Attorney-General. Reporter.

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Supreme Judicial Court; Constitution and General Jurisdiction.

Sec. 1. Constitution of the court. R. S. c. 82, § 1. 1923, c. 40. 1929, c. 141, § 1. The supreme judicial court shall consist of a chief justice and six associate justices and such active retired justices as may be appointed and serving on said court, learned in the law and of sobriety of manners.

Any vacancies existing on March twenty-sixth, nineteen hundred twenty-nine or occurring thereafter by reason of death, voluntary retirement, or resignation shall remain unfilled until the number of associate justices is reduced to five and thereafter the court shall consist of a chief justice and five associate justices and such active retired justices as may be appointed and serving on said court.

Const. of Me. Art. VI, § 1; 73 Me. 224; 98 Me. 130.

Sec. 2. General jurisdiction; control of records. R. S. c. 82, §§ 2, 3, 5. 1929, c. 141. The supreme judicial court may exercise its jurisdiction according to the common law not inconsistent with the constitution or any statute; and may punish contempts against its authority by fine and imprisonment or either, and administer oaths. It has general superintendence of all inferior courts for the prevention and correction of errors and abuses, where the law does not expressly provide a remedy; control of all records and documents in the custody of its clerks; whenever justice or the public good requires, it may order the expunging from the records and papers on file in any case which has gone to judgment of any name or other part thereof unnecessary to the purpose and effect of said judgment. It may issue all writs and processes, not within the exclusive jurisdiction of the superior court, necessary for the furtherance of justice, or the execution of the laws, in the name of the state of Maine, under the seal of said court, attested by any justice not a party or interested in the suit, and signed by the clerk.

See c. 49, § 17; c. 54, § 44; 41 Me. 17, 55; 43 Me. 176; 49 Me. 400; 53 Me. 88, 110; 57 Me. 23; 58 Me. 375; 67 Me. 433; 70 Me. 328; 77 Me. 238; 81 Me. 544; 83 Me. 286; *108 Me. 476; 111 Me. 34; *123 Me. 343; *125 Me. 496.

Law Court.

Sec. 3. Constitution of law court; concurrence required. R. S. c. 82, § 41. 1929, c. 141, § 2. When sitting as a law court to determine questions of law, arising in suits at law or in equity, and in criminal trials and proceedings, the supreme judicial court shall be composed of five or more of the justices who shall hear and determine such questions by the concurrence of a majority of the justices sitting and qualified to act. In any civil action in which there is a subsisting verdict, if a majority of the justices sitting and qualified to act in the case, after mature consideration and consultation, do not concur in granting a new trial, the court shall render judgment on the verdict.

41 Me. 17; 45 Me. 153; 57 Me. 510, 540.

Sec. 4. Justice not to sit in review of causes tried before him. R. S. c. 82, § 42. 1919, c. 154. No justice shall sit in the law court upon the hearing of any cause tried before him, nor take any part in the decision thereof.

Sec. 5. Sessions of law court. R. S. c. 82, § 43. 1927, c. 229, § 2. 1929, c. 141, § 4. For the purpose of the law court the state shall constitute one district. The court shall hold eight sessions each year. The time and places of holding the several sessions of the court shall be determined by the chief justice and announced before December first of each year.

Sec. 6. All pending cases marked "law" to be certified to clerk; how entered and determined. R. S. c. 82, § 44. 1929, c. 269. At least ten days before the sitting of each term of the law court, the clerks of the judicial courts, and recorders of the municipal courts, whose charters so provide, shall certify to the clerk of such term, all cases, pending in their respective courts, marked "law" and all other matters of which the law court has jurisdiction, except cases in which exceptions or appeals in proceedings in equity have been adjudged frivolous and intended for delay; and they shall be entered on the docket of the law court and shall, together with all other matters therein pending, be in order for argument, determination or continuance in the alphabetical order of counties. Provided, that causes marked "law" and all other matters of which the law court has jurisdiction in the counties of Androscoggin, Cumberland, Franklin, Knox, Lincoln, Oxford, Sagadahoc and York shall not be entered or be in order for hearing at any term holden at Bangor, except by consent of both parties; but such causes shall be entered and be in order for hearing at the Portland and Augusta terms.

101 Me. 333; 112 Me. 317; 121 Me. 152.

Sec. 7. Clerks of terms of law court; duties; compensation; expenses of county. R. S. c. 82, § 45. 1929, c. 141, § 13. The chief justice of the supreme judicial court shall, from time to time, designate one or more of the clerks of court or some competent person or persons who shall act as clerks of the law court, and receive such reasonable compensation as may be fixed by the chief justice, but which in the aggregate shall not exceed a total sum of fifteen hundred dollars per year for all services rendered by such clerks including the issuing of certificates of rescripts. The chief justice, or in his absence, the senior justice present shall allow to the county in which any law term is held such expense as may be incurred on account of such law term which shall be paid by the state. The dockets of the law court shall be made from time to time and kept as the court may direct.

Sec. 8. Messenger in Cumberland county. 1929, c. 141, § 18. Any justice of the supreme judicial court residing in Cumberland county may appoint a messenger to act at all sessions of the law court in said county and at all equity sessions held in said county, whose compensation shall be the same as,

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but shall not exceed, the amount allowed to the messenger for the supreme judicial court on July thirteenth, nineteen hundred twenty-nine.

Sec. 9. Jurisdiction of law court; disposition of cases. R. S. c. 82, § 46. The following cases only come before the court as a court of law: cases in which there are motions for new trials upon evidence reported by the justice; questions of law arising on reports of cases; bills of exceptions; agreed statements of facts; cases, civil or criminal, presenting a question of law; all questions arising in equity cases; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on writs of habeas corpus, mandamus and certiorari, when the facts are agreed on, or are ascertained and reported by a justice. They shall be marked "law" on the docket of the county where they are pending, and there continued until their determination is certified by the clerk of the law court to the clerk of courts of the county and the court shall immediately after the decision of the question submitted to it, make such order, direction, judgment or decree, as is fit and proper for the disposal of the case, and cause a rescript in all civil suits, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the law court to the clerk of courts of the county where the action is pending, and to the reporter of decisions; and if no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued, the case, together with such rescript, if the reporter deems the same of sufficient importance for publication.

41 Me. 18; *45 Me. 153, 418; 46 Me. 331; 50 Me. 272; 56 Me. 233; 57 Me. 23, 510; 59 Me. 580; 62 Me. 320; 67 Me. 133; 68 Me. 203, 343; 70 Me. 333; 72 Me. 104; 73 Me. 139, 224; 74 Me. 109; 77 Me. 243; *100 Me. 275; 102 Me. 152; 104 Me. 82, *421; *107 Me. 244, 304; 113 Me. 281, 526; 114 Me. 443; 118 Me. 117; 119 Me. 15; *121 Me. 152; 125 Me. 72; *126 Me. 133.

Sec. 10. Arguments in writing. R. S. c. 82, § 47. When parties enter an agreement on the docket of a county under cases named in the preceding section, and transmit arguments in writing to the court before or at its next law term, such cases need not be entered on the docket of the law court; and the court may pronounce judgment in any county, and cause it to be certified and entered in the county where it is pending, as of the preceding term.

57 Me. 510; 85 Me. 129; 88 Me. 132; 120 Me. 294; 122 Me. 406; 123 Me. 524; 127 Me. 168.

Sec. 11. Complaint for not entering cases on law docket. R. S. c. 82, § 48. When cases mentioned in section nine are not entered on the docket of the law court within the first two days of the next law term, the opposite party may, at that term, enter a complaint, briefly setting forth the facts, and the court, if satisfied of the truth thereof, may render judgment in his favor, as in other cases decided by it; and if the case is on exceptions, treble costs shall be awarded from the time when they were filed.

36 Me. 35.

Sec. 12. Entry of judgment; attachments and rights to disclose preserved; proceedings on death of party. R. S. c. 82, § 49. The clerk of courts of a county, by virtue of a certificate, provided for in this chapter, received in vacation, shall enter judgment as of the preceding term, and execution may issue as of that term; but attachments then in force continue for thirty days after the next term in that county; and if the defendant was arrested on mesne process and gave bond to disclose after judgment, he may do so after said next term without breach of his bond. Provided, that where a party to a suit dies while the action is pending before the law court, and no suggestion of such death has been made upon the docket of the county where the action is pending, at the time when the certificate of decision is received by the clerk of courts in

such county, any justice of the superior court may, in term time or vacation, order such action to be brought or carried forward on such county docket to a subsequent term of the court in such county, in order that such death may be suggested upon the docket, and the proper parties entitled to defend or prosecute such suit may enter their appearance therein, and that the judgment in said action may be entered up at such subsequent term, in accordance with such certificate from the law court.

See c. 96, § 57; c. 101, §§ 7, 12; 68 Me. 203; 72 Me. 451; 76 Me. 97; 79 Me. 358; 104 Me. 422; 106 Me. 116, 180; 107 Me. 188; 115 Me. 89, 373.

Sec. 13. Attachments continue in certain cases, on death of plaintiff; if defendant has been arrested, proceedings. R. S. c. 82, § 50. When a plaintiff dies before the expiration of thirty days from the rendition of judgment in his favor, or before the expiration of thirty days after the next term of court in the county where the action was pending, in cases where a certificate of decision, provided for in this chapter, is received by the clerk of courts of said county, in vacation, and no suggestion of such death has been made upon the docket of said courts, execution may issue as is now provided, and all attachments then in force continue for ninety days after the next term of the court in that county; and if the defendant was arrested on mesne process, and gave bond to disclose after judgment, he may do so after said next term without breach of his bond.

Superior Court; Constitution, General Jurisdiction, and Powers.

Sec. 14. Constitution of the court. 1929, c. 141, § 5. The superior court, heretofore established, shall consist of seven justices, and such active retired justices as may be appointed and serving on said court, learned in the law and of sobriety of manners. The chief justice of the supreme judicial court shall assign the justices of the superior court to hold the trial terms of said court. Whenever in the opinion of the chief justice of the supreme judicial court it becomes necessary, he may designate a justice of the supreme judicial court or any active retired justice of the supreme judicial court or of the superior court to hold a term of said superior court or may designate any of such justices or a justice of the superior court to hold one or more sessions thereof separate from the session presided over by the justice holding the regular trial term.

Sec. 15. Jurisdiction; powers. R. S. c. 82, §§ 80, 84, 99. 1917, c. 260, §§ 3, 4, 1919, c. 9, §§ 3, 4; c. 84; c. 178, § 1. 1929, c. 141, § 7. The superior court, exclusive of the supreme judicial court, shall have and exercise jurisdiction and have and exercise all of the powers, duties, and authority necessary for exercising the jurisdiction in any and all matters either original or appellate which was, prior to January first, nineteen hundred thirty, within the jurisdiction of the supreme judicial court or any of the superior courts except as concurrent jurisdiction is vested in the several municipal courts and except as otherwise provided in this chapter provided that it shall have and exercise none of the jurisdiction, power, duties, and authority of the supreme judicial court sitting as a law court. In all places in the statutes where the words "supreme judicial court" are used the words "superior court" shall be added or substituted whenever necessary to carry out the provisions of this chapter.

Sec. 16. Justices of superior court may adopt rules. 1929, c. 141, § 14. The justices of the superior court may adopt rules governing the proceedings in said court, but until such rules are adopted and published the rules of the supreme judicial court shall govern the proceedings unless inconsistent with

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this chapter. The supreme judicial court shall take judicial notice of the rules of the superior court.

Sec. 17. Conferences of justices. 1927, c. 229, § 4. 1929, c. 141, § 16. The chief justice of the supreme judicial court may from time to time call together the several justices of the superior court at such place as he may appoint for conference as to the conduct and dispatch of judicial business, and interchange of views in matters of practice in said court. In addition to their salaries and expenses in holding the several terms of court to which they are assigned, the several justices shall be entitled to their actual cash disbursements in attending such conferences.

Sec. 18. Clerks of the superior court. 1929, c. 141, § 13. The clerk of the judicial courts in any county shall act as the clerk of the superior court in such county. Any deputy clerk, if his appointment has been approved by a resident justice of said superior court or by the chief justice of the supreme judicial court, may, whenever directed by the clerk, act as clerk of the superior court or any or either session thereof in that county.

Sec. 19. Seal; form of writs and processes. R. S. c. 82, § 88. 1929, c. 141, § 7. The justices of the superior court shall establish a seal for said court and all writs and processes therefrom shall be in the name of the state, in the usual form, bearing the teste of any justice of said court, under the seal of said court; they shall be signed by any one of its clerks and obeyed and executed throughout the state, and may be made returnable in the superior court in any other county in which the action might be legally brought. Executions issued by the supreme judicial court prior to January first, nineteen hundred thirty may be reissued bearing the teste of any justice of the superior court and under the seal of said court.

Sec. 20. Writs when returnable. 1929, c. 141, § 12. All writs of the superior court returnable at a regular term of court in the county of Cumberland shall be made returnable at one of the next three terms to be begun and held after the issuing thereof, and in the counties of Androscoggin, Kennebec and Penobscot at one of the next two terms to be so begun and held. In all other counties such writs shall be made returnable at the first term of court to be held more than fourteen days after the issuing thereof.

Sec. 21. Trial terms. 1929, c. 264. For the trial of civil actions and persons accused of offenses and for the transaction of all business within the jurisdiction of the superior court, the trial terms of the superior court shall be held annually by one justice at the following places and times, and the justices shall so hold said terms as directed by the chief justice of the supreme judicial court, that their services shall be divided to each county as equally as may be:—

Androscoggin: At Auburn on the first Tuesdays of January, March, April, June, October and December for civil and criminal business, provided that the grand jury shall attend only at the January, June and October terms, unless specially summoned by order of a justice of said court. All recognizances for appearance to abide action by the grand jury shall be for appearance at the term at which the next regular session of the grand jury is held, but appeals in criminal as well as civil matters and removals shall be to the next regular term.

Aroostook: At Houlton on the first Tuesdays of April and November for civil and criminal business, and at Caribou on the first Tuesday of February and second Tuesday of September for civil business only.

Cumberland: At Portland on the first Tuesday of every month except July and August; but the criminal business of said county shall be transacted at the terms held on the first Tuesdays of January, May and September, together with civil business. The January, May and September terms of said court may be kept open for criminal business after their final adjournment for civil business for such time as the presiding justice may deem expedient provided that they shall be finally adjourned at least seven days before the convening of the next succeeding term in which criminal business may be done.

Franklin: At Farmington on the first Tuesday of February, second Tuesday of May and second Tuesday of September; the May term shall be held without a grand jury and with but one traverse jury, unless a justice of said court shall otherwise specially order, in which case the clerk shall send venires for the requisite number of traverse jurors, and shall summon the grand jury of the preceding term, as the terms of said order may require. All recognizances from municipal courts and trial justices in which parties are held to await the action of the grand jury, made returnable to said May term, shall, when no grand jury is in attendance, be continued to and have day in the next term of the court held in said county.

Hancock: At Ellsworth on the second Tuesdays of April, September and December.

Kennebec: At Augusta on the first Tuesdays of February, April, June and October, and at Waterville on the first Tuesday of December; but the criminal business of said county shall be transacted at the terms held on the first Tuesdays of February, June and October, together with civil business. The presiding justice may continue any case pending in said court without costs, when in his judgment justice may require it, in order to give the parties in interest opportunity to try any such case in either Waterville or Augusta in said county.

Knox: At Rockland on the first Tuesdays of February, May and November.

Lincoln: At Wiscasset on the first Tuesday of May and first Tuesday of November.

Oxford: At Paris on the second Tuesday of February and on the first Tuesday of November, and at Rumford on the second Tuesday of May.

Penobscot: At Bangor on the first Tuesdays of January, April, June, September and November and the criminal business of said county shall be transacted at the terms held on the first Tuesdays of January, June and September, together with civil business and the criminal business of said county may be transacted at the April term together with civil business provided that the grand jury shall not attend at the April term unless specially summoned by order of a justice of said court.

Piscataquis: At Dover-Foxcroft on the second Tuesdays of March and September.

Sagadahoc: At Bath on the second Tuesday of January, the first Tuesday of June and the third Tuesday of October.

Somerset: At Skowhegan on the second Tuesday of January, the first Tuesday of May and the second Tuesday of September.

Waldo: At Belfast on the first Tuesday of January, the second Tuesday of April and the first Tuesday of October.

Washington: At Machias on the first Tuesday of February and the second Tuesday of October, and at Calais on the first Tuesday of June.

York: At Saco on the second Tuesday of January and at Alfred on the first Tuesdays of May and October.

Sec. 22. Simultaneous sessions. 1929, c. 264, § 2. Two or more simultaneous sessions of the superior court may be held in the same county, whenever the chief justice of the supreme judicial court determines that public convenience so requires; and the business may be so divided as to secure its speedy and convenient disposal.

Sec. 23. Sheriff or deputy to attend court; justice not attending, court to be adjourned; proceedings. R. S. c. 82, §§ 54, 90. 1919, c. 30. The sheriff of each of said counties shall attend the superior court thereof unless the supreme judicial court is in session in such county in which case he shall specially designate a deputy, approved by the justice of such superior court, so to attend. When no justice attends on the day for holding a court, the sheriff, or in his absence, the clerk, shall by oral proclamation in the court-house and by notice posted on the door thereof, adjourn the court from day to day until a justice attends, and, in case of necessity, upon order of the chief justice, or the justice appointed to hold said court, to a fixed day, or without day; and when so adjourned, without day, actions brought for that term shall be entered by the clerk, and they, with all actions on the docket, shall be continued to the next term.

56 Me. 425; 123 Me. 365.

Sec. 24. Exceptions, in civil and criminal cases; proceedings, if they are deemed frivolous; motions for new trial. R. S. c. 82, § 55. 1919, c. 227. When the court is held by one justice, a party aggrieved by any of his opinions, directions, or judgments, in any civil or criminal proceeding, may, during the term, present written exceptions in a summary manner, signed by himself or counsel, and when found true they shall be allowed and signed by such justice; provided, however, that in all cases, such exceptions shall be presented within thirty days after the verdict is rendered or the opinion, direction or judgment is announced in the case in which such verdict, opinion, direction, or judgment is made; but if he deems them frivolous and intended for delay, he may so certify on motion of the party not excepting; and such exceptions may then be transmitted at once by such justice to the chief justice, and shall be argued in writing on both sides within thirty days thereafter, unless the presiding justice, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the case is pending. This section applies to exceptions filed in any civil or criminal proceedings in the superior court. If the justice of the supreme judicial court or of the superior court disallows or fails to sign and return the exceptions, or alters any statement therein, in either civil or criminal proceedings, and either party is aggrieved, the truth of the exceptions presented may be established before the supreme judicial court sitting as a court of law, upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard, and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The supreme judicial court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed. All motions for new trials, as against law or evidence, shall be filed during the term at which verdict is rendered, but in no case later than thirty days after verdict rendered.

41 Me. 18; 45 Me. *154, 418; 49 Me. 401; 56 Me. 25, 249; *57 Me. 292; 58 Me. 233; 60 Me. 464; *62 Me. 321; 64 Me. 176, *210; 65 Me. 81; 67 Me. 231, 387, 444; 74 Me. 109, 212; 77 Me. 243; *86 Me. 295; 92 Me. 79; 98 Me. 201; 101 Me. 236, 332, 402; 106 Me. 114, 539; 109 Me. 386; *112 Me. 316; 113 Me. 140, 161; 114 Me. 511; 115 Me. 327; *117 Me. 70; 118 Me. 63, 109, 169; 119 Me. 224; 121 Me. 152; *123 Me. 393; 124 Me. 366; 125 Me. 458.

Sec. 25. Authority of court. R. S. c. 82, § 96. Said superior court may administer all necessary oaths, render judgment, and issue execution, punish for contempt, and compel attendance; make all such rules and regulations, not repugnant to law, as may be necessary and proper for the administration of justice promptly and without delay; and the provisions of law relative to the jurisdiction of the supreme judicial court in each of said counties over parties, the arrest of persons, attachment of property, the time and mode of service of precepts, proceedings in court, the taxation of costs, the rendition of judgments, the issuing, service, and return of executions, and all other subjects, apply to the superior court in all respects, except so far as they are modified by this chapter; and the superior court is clothed with all the powers necessary for the performance of all its duties.

Sec. 26. Cases heard by presiding justice. R. S. c. 82, § 53. The justice presiding at a term of the superior court shall decide any cause without the aid of a jury, when the parties enter upon the docket an agreement authorizing it.
5 Me. 140; 65 Me. 81; 92 Me. 79; 107 Me. 305; 126 Me. 255; 128 Me. 382.

Sec. 27. Affidavit in abatement. R. S. c. 82, § 4. Any affidavit required by rule of court, to pleas or motions in abatement, may be made at any time before entry of the action or before filing the same.

76 Me. 423.

Sec. 28. Trial to proceed when dilatory pleas are overruled. R. S. c. 82, § 58. When a dilatory plea is overruled and exceptions taken, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to the provisions of section twenty-four.

53 Me. 541; 65 Me. 367; 67 Me. 38; 71 Me. 28; 80 Me. 100; 91 Me. 577; *93 Me. 556; 95 Me. 134; *101 Me. 540; 104 Me. 284; *112 Me. 316; 113 Me. 526; 121 Me. 152; 122 Me. 45; 125 Me. 459.

Sec. 29. Interest on verdicts and awards. R. S. c. 82, § 61. Interest shall be allowed on verdicts and amounts reported by referees to be due, from the time of finding such verdicts or making such reports to the time of judgment.

36 Me. 22; 50 Me. 338; 53 Me. 515.

Naturalization and Citizenship.

Sec. 30. Jurisdiction of applications for naturalization. R. S. c. 82, § 102. The superior court shall have jurisdiction of applications for naturalization. No other court established by this state shall entertain any primary or final declaration or application made by or in behalf of an alien to become a citizen of the United States, or entertain jurisdiction of the naturalization of aliens.

*88 Me. 200.

Sec. 31. Jurisdiction of petitions for judicial declaration of citizenship; proceedings. R. S. c. 82, § 103. The superior court shall have jurisdiction to hear and determine petitions of persons alleging themselves to be citizens, resident and domiciled inhabitants of this state and praying a judicial declaration of such citizenship, residence and domicile. Such petitions shall set forth the grounds upon which the application is based, shall be supported by such evidence as the court shall deem necessary, and shall be filed, heard and determined in the county in which the petitioner claims residence. If such petitioner desires a jury trial upon his petition, he may indorse a request therefor upon the petition at the time of entry and shall thereupon be entitled to the same.

Sec. 32. Notice to attorney-general. R. S. c. 82, § 104. Notice of said petition shall be given to the attorney-general by causing an attested copy of the same to be served upon him by an officer qualified to serve civil process, at least fourteen days prior to the first day of the term of court at which said petition is entered and the attorney-general may appear and be heard thereon.

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Sec. 33. Change of residence. R. S. c. 82, § 105. In the event of a subsequent change of residence on the part of any person so declared to be a citizen of this state, said court shall also have jurisdiction and authority upon petition therefor and like proceedings had to make a judicial declaration of such change of residence, and decree that the former judgment entered in such case shall thereafter be of no force and effect.

Habeas Corpus and Extraordinary Remedies.

Sec. 34. Concurrent jurisdiction of supreme judicial court and superior court in habeas corpus and extraordinary remedies. R. S. c. 82, § 5. 1929, c. 141, § 7. The supreme judicial court and the superior court shall have and exercise concurrent original jurisdiction in proceedings in habeas corpus, writs of prohibition, error, mandamus, quo warranto and certiorari.

Equity.

Sec. 35. Concurrent jurisdiction of supreme judicial court and superior court in equity. 1929, c. 141, § 7. The supreme judicial court and the superior court shall have and exercise concurrent original jurisdiction in all equity cases and proceedings; and causes in equity originating in either court or any proceeding therein may be heard and determined by a justice of the supreme judicial court or of the superior court as though the cause originated in the court of which such justice is a member. There shall be only one equity docket in each county, and all equity cases commenced in a county shall be entered consecutively on the equity docket in that county.

Sec. 36. Equity powers. R. S. c. 82, § 6. 1929, c. 141, § 7. The supreme judicial court and the superior court have jurisdiction as a court of equity, in the following cases:

7 Me. 231; 8 Me. 322; 17 Me. 141, 294, 407; 18 Me. 210; 19 Me. 127, 366, 434; 20 Me. 271; 21 Me. 257, 276; 22 Me. 196, 209, 515; 23 Me. 48, 100, 178, 270, 451; 24 Me. 47; 25 Me. 282, 345, 381, 537; 29 Me. 276, 496; 31 Me. 96; 32 Me. 402, 483; 33 Me. 224, 534; 34 Me. 144, 372; 36 Me. 52, 124, 583; 37 Me. 269, 310; 40 Me. 246; 41 Me. 119; 50 Me. 239; 59 Me. 79; 72 Me. 281.

I. For the foreclosure of mortgages of real and personal property, and for redemption of estates mortgaged.

See c. 104, § 30; 59 Me. 35, 77; *75 Me. 268; 83 Me. 293; *86 Me. 59.

II. For relief from forfeiture of penalties to the state, from forfeitures in civil contracts and obligations, and in recognizances in criminal cases.

53 Me. 63; *103 Me. 453.

III. To compel the specific performance of written contracts, and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.

See c. 90, § 49; c. 104, § 24; c. 123, §§ 13, 14, 17; 40 Me. 132; 42 Me. 40; 46 Me. 41; 47 Me. 315; 63 Me. 99; 84 Me. 198; *85 Me. 434; 95 Me. 224; 97 Me. 400; 98 Me. 511; *117 Me. 279.

IV. For relief in cases of fraud, trust, accident or mistake.

See c. 76, § 66; c. 82, §§ 17-19; c. 90, § 15; 43 Me. 211; 44 Me. 216; 45 Me. 131; 49 Me. 366; 57 Me. 510; 60 Me. 183; 61 Me. 514; 62 Me. 58, 522; 67 Me. 220; *69 Me. 497; *71 Me. 570; 73 Me. 33; *74 Me. 589; 96 Me. 41; 116 Me. 399; *127 Me. 269.

V. In cases of nuisance and waste.

See c. 26, §§ 1, 23; c. 109, § 7; 60 Me. 194; 102 Me. 285.

VI. In cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.

See c. 64, § 53; 76 Me. 274.

VII. In cases of partnership, and between partners or part owners of vessels and of other real and personal property to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees, and enforce their decrees by proper process in cases where all interested persons, within the jurisdiction of the court, are made parties.

See c. 44, § 18; c. 48, § 5; c. 76, § 66; 52 Me. 57; 62 Me. 114; *64 Me. 465; 73 Me. 75; *78 Me. 150.

VIII. Of bills of interpleader notwithstanding the complainant is a common carrier and as such has a lien for carriage or storage upon the property which is described in the bill.

IX. To hear and determine property matters between wife and husband, or husband and wife as provided in section six of chapter seventy-four and to make all necessary orders and decrees relating to such matters, and to issue all necessary process to enforce such orders and decrees, and to cause all such orders and decrees to be enforced.

*114 Me. 382.

X. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust, and the expediency of making changes and investments of property held in trust.

See c. 82, § 10; c. 85, § 12; c. 88, § 14; 49 Me. 302; 57 Me. 143, 524; 59 Me. 330, 481; 62 Me. 541; 64 Me. 493; 66 Me. 101, 535; 68 Me. 35, 381; 69 Me. 289; 70 Me. 210; *80 Me. 594; 82 Me. 80; 84 Me. 555; 85 Me. 133; 86 Me. 134; *97 Me. 523; *99 Me. 499; 104 Me. 323; *111 Me. 248, 521; *115 Me. 408; *115 Me. 418; 116 Me. 382; 117 Me. 465; 120 Me. 431; 126 Me. 51.

XI. In suits for redelivery of goods or chattels taken or detained from the owner, and secreted or withheld, so that the same cannot be replevied, and in bills in equity, by creditors, to reach and apply in payment of a debt, any property, right, title, or interest, legal or equitable, of a debtor, or debtors, which cannot be come at to be attached on writ, or taken on execution in a suit at law, and any property or interest conveyed in fraud of creditors.

See c. 124, § 32; 71 Me. 70; *73 Me. 570; *76 Me. 447; *77 Me. 474; 78 Me. 249; 79 Me. 230; *84 Me. 326, 495; 90 Me. 380; 92 Me. 268; 96 Me. 43; 99 Me. 189; 104 Me. 493; 107 Me. 315; 110 Me. 437; *111 Me. 557; 112 Me. 150; *114 Me. 115; *118 Me. 29; 119 Me. 213.

XII. In cases where the power is specially given by statute, and for discovery when a discovery may be lawfully required according to the course of chancery proceedings.

See c. 48, § 5; *43 Me. 574; 53 Me. 441.

XIII. When counties, cities, towns, school districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint.

See c. 5, § 62; 55 Me. 65; *56 Me. 37; 60 Me. 127; 80 Me. 134; 85 Me. 49; 87 Me. 89; *92 Me. 531; 93 Me. 501; *100 Me. 30; 108 Me. 474; 111 Me. 486; *113 Me. 123; 120 Me. 15; 124 Me. 251, *314; 127 Me. 19.

XIV. And have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.

*8 Me. 137; 69 Me. 303; 71 Me. 554, 570; 73 Me. 244; 74 Me. 234, *588; 75 Me. 268; 77 Me. 69, 95; *86 Me. 57; 114 Me. 333; 117 Me. 17.

Sec. 37. Jurisdiction between partners and part owners; extent and effect on other parties. R. S. c. 82, § 7. The court has jurisdiction of cases mentioned

in paragraph seven of the preceding section, notwithstanding persons interested not within the jurisdiction of the court, are not made parties; but, in such cases, no decree affects the right of any person not a party to the suit, unless he voluntarily becomes a party before final decree, except as hereinafter provided. In all such cases, the court has jurisdiction, if the case requires it, over all property of the partnership or cotentancy within the state, and the other partners or cotenants, out of the jurisdiction, may protect their interests by coming in at any time as parties to the bill; but, if there is no such property within the state, the jurisdiction of the court is limited to the adjustment of accounts and compelling contribution between the parties over whom the court has jurisdiction.

Sec. 38. Property of debtor out of state, or of uncertain value, may be applied. R. S. c. 82, § 8. The court has jurisdiction of cases mentioned in paragraph eleven of section thirty-six, notwithstanding the fact that the property sought to be reached and applied is in the hands, possession, or control of the debtor independently of any other person, or that it is not within the state, or that it is of uncertain value, provided, the value can be ascertained by a sale or appraisal, or by any means within the ordinary procedure of the court, or that it cannot be reached and applied until a future time.

Sec. 39. Interest of a copartner may be applied in payment of plaintiff's debt. R. S. c. 82, § 9. In such suit the interest of a copartner in the partnership property may be reached and applied to the payment of the plaintiff's debt; provided, however, that unless the plaintiff's debt is in judgment, the business of the partnership shall not be interfered with by injunction or otherwise, farther than to restrain the withdrawal of any portion of the debtor's share or interest therein, until the plaintiff's debt is established; and provided further, that if either copartner shall give to the plaintiff a sufficient bond with sureties approved by the clerk, conditioned to pay to the plaintiff the amount of his debt and costs, within thirty days after the same is established, the court shall proceed no further therein save to establish the debt; and any injunction previously issued shall be dissolved upon the filing of such bond. But no provision of paragraph eleven of section thirty-six, or of this section, or of section thirty-eight shall be so construed as to reach and apply in payment of a debt, any property exempted by sections eleven and twelve of chapter eleven, sections six, seven, eight, and twenty of chapter twenty-four, and by chapter ninety-five.

See c. 95, § 67, ¶ xi.

Sec. 40. Masters in chancery; appointment; tenure; duties; payment of fees. R. S. c. 82, § 10. The supreme judicial court by majority, shall appoint masters in chancery, not more than five in a county, and make all needful rules relating to proceedings before them. Such masters shall be sworn, and hold their offices for five years, unless sooner removed by the court; perform the duties pertaining to their offices according to equity practice, and be entitled to the fees therefor allowed by the court. Unless the parties agree upon another person, all cases shall be committed to them. The fees and necessary expenses of masters so appointed, and of masters who shall act in any cause by agreement of parties, shall be fixed and allowed by the court upon the coming in of the report, and, if the court in its discretion shall so order, shall be paid by the county on presentation of the proper certificate of the clerk of courts for that county.

40 Me. 53; 53 Me. *216, 352.

Sec. 41. Court always open for equity proceedings. R. S. c. 82, § 11. Said court shall always be open in each county for equity proceedings, except upon days on which, by law, no court is held, and in the first instance, except as

hereinafter provided, all hearings shall be had, all orders and decrees made, and all process issued by a single justice, except on appeal or exceptions as hereinafter provided, and said court shall establish rule-days for the return of subpoenas and the transaction of business relating to equity cases.

75 Me. 417; 82 Me. 250; 96 Me. 44; *101 Me. 156; *107 Me. 70.

Sec. 42. Causes in equity, how begun, return of subpoena, and service. R. S. c. 82, § 12. Causes in equity shall be begun by bill of complaint filed in the clerk's office, upon which subpoena shall issue as matter of course returnable on the first day of a term of court for the county where it is filed, or upon a rule-day, which in either case shall be held within sixty days after the filing of such bill, and such subpoena shall be served at least fourteen days before the return day thereof; or, by order of court, such subpoena may be made returnable on any day in or out of term, and be served as directed in such order; or such bill may be inserted in a writ of attachment, upon which property may be attached and which shall be made returnable as writs at common law. In all cases, service shall be made by copy of the subpoena and bill or writ of attachment. The bill of complaint shall state the material facts and circumstances relied on by the plaintiff, with brevity, omitting immaterial and irrelevant matters, and may be amended or reformed at the discretion of the court, with or without terms, at any time before final decree is entered in said cause.

See c. 95, § 64; 56 Me. 76; *71 Me. 169; *77 Me. 140, 499; 82 Me. 202, 250; *101 Me. 156; 111 Me. 559; 125 Me. 210.

Sec. 43. Certificate to be recorded in registry of deeds. R. S. c. 82, § 13. No action commenced by bill in equity not inserted in a writ of attachment, in which the title to real estate is involved, is effectual against any person not a party thereto or having actual notice thereof, until a certificate, setting forth the names of the parties, the date of the bill and the filing thereof, and a description of the real estate in litigation as described in said bill, duly certified by the clerk of courts in and for the county where said bill is pending, is recorded in the registry of deeds in the county or district in which such real estate is situated.

See § 61; c. 15, § 18; c. 95, § 64; c. 126, § 3; 94 Me. 322.

Sec. 44. Verification of bill. R. S. c. 82, § 14. Verification by the oath of a party for whose benefit the bill sets forth that it is prosecuted, is equivalent to such verification by the plaintiff.

Sec. 45. Bills of discovery and answers thereto. R. S. c. 82, § 15. If discovery is sought, it may be by bill, with or without interrogatories annexed thereto, for the purpose of such discovery. Answers thereto shall be made within thirty days after the return day of such bill, or within such time as the court orders, and questions arising thereon shall be determined by the rules established by said court as herein provided, and in the absence thereof, by the rules applicable to bills of discovery in equity procedure.

Sec. 46. Appearance by defendant; proceedings in case of default. R. S. c. 82, § 16. When process is made returnable at any regular term, the defendant shall appear within the first three days thereof; otherwise on the return day of such process; and in default thereof, on motion of the plaintiff in writing, the bill shall be taken pro confesso, as matter of course, at the expiration of ten days after the filing of such motion, but such decree for good cause shown, on motion of the defendant, may be opened within ten days after it is made; and in such case the court shall fix the time for making a defense.

See § 50; 96 Me. 305; 111 Me. 132.

Sec. 47. Defense, how and when to be made; proceedings on default; form of answer. R. S. c. 82, § 17. Defense shall be made by answer, plea or demurrer,

within thirty days after the time for appearance has elapsed, or within the time ordered by the court, as provided in the preceding section; but for good cause shown the court may in either case enlarge the time therefor. In default of such defense the bill shall be taken *pro confesso*, as matter of course, on motion of plaintiff in writing, filed on any day after such default, and served on the defendant. But such decree may be opened, on motion of defendant within ten days thereafter, as provided in said section. All answers shall be signed by the defendant and sworn to by him, if the plaintiff in his bill asks for an answer upon oath, otherwise it may be signed by the defendant, his agent or attorney, but in such case it has no effect as evidence, except to cast the burden of proof upon the plaintiff.

78 Me. 88; 95 Me. 305; 108 Me. 101.

Sec. 48. Replication. R. S. c. 82, § 18. The plaintiff shall file a replication within fifteen days after notice has been served on him or his counsel that answer or plea has been filed, but such time may be enlarged on such terms as the court orders, or the bill may be dismissed for want of prosecution, on motion filed by defendant at any time after said fifteen days, or at the expiration of the time ordered by the court for filing such replication.

Sec. 49. Time for hearing upon bill and demurrer. R. S. c. 82, § 19. When a demurrer is filed, the court upon motion of either party, may set the cause for hearing upon bill and demurrer at any time. When a plea or answer is filed, the court, upon the motion of the plaintiff, may set the cause for hearing upon bill and plea, or answer at any time. When a replication is filed, the court, upon the motion of either party, may set the cause for hearing upon bill, answer, or plea and evidence, but such hearing shall not be had until after thirty days from the filing of the replication, unless by consent or special order of court. When a jury trial is ordered it shall be had at the next jury term after such thirty days unless otherwise ordered by the court. Any time fixed for hearing or trial may be extended for good cause shown.

90 Me. 399; 123 Me. 80.

Sec. 50. Court may fix time limits. R. S. c. 82, § 16. In all causes the court, by special order, may fix such time, or times, for filing answer, plea, or demurrer, or replication, or for hearing of the cause, as justice may require.

Sec. 51. Testimony at hearing. R. S. c. 82, § 20. At any hearing or trial in equity, the evidence may be presented wholly or partly by oral testimony, or by depositions. When oral testimony is used, it shall be reduced to writing by the stenographer, certified by him, and filed with the depositions, for use in case of appeal.

See c. 96, § 170; 108 Me. 337.

Sec. 52. Justice to decide cause, subject to appeal. R. S. c. 82, § 21. The justice before whom such hearings are had, has full power to decide any motion or cause so heard, and shall make and enter such order and decree, as seems just and proper to him, and in accordance with the established principles of equity jurisprudence, subject to appeal and exceptions as hereinafter provided.

*75 Me. 417; 79 Me. 41; 88 Me. 359; 108 Me. 338.

Sec. 53. Appeal, how to be claimed; proceedings in law court. R. S. c. 82, § 22. From all final decrees of such justice, an appeal lies to the next term of the law court. Said appeal shall be claimed by an entry on the docket of the court from which the appeal is taken, within ten days after such decree is signed, entered and filed, and notice thereof has been given by such clerk to the parties or their counsel. The appellant shall enter such appeal, and furnish written or printed copies of the case on the first day of said law term, and for good cause

shown, the law court may enlarge the time for furnishing such copies. Such appeals shall be heard at the term to which they are taken, unless otherwise agreed, or the law court shall for good cause, order a further time for the hearing thereof, and shall on such appeal, affirm, reverse, or modify the decree of the court below, or remand the cause for further proceedings, as it deems proper. All cases in which appeals or exceptions are taken from a final decree, shall remain on the docket of the court below, marked "law," and decree shall be entered therein by a single justice, in accordance with the certificate and opinion of the law court.

*78 Me. 337; 81 Me. 141; *82 Me. 203; 83 Me. 193; *88 Me. 359; 99 Me. 223;
*106 Me. 546; *107 Me. 150; 109 Me. 457; 120 Me. 151; *121 Me. 214.

Sec. 54. Justice may make orders for protection of rights of parties, while an appeal is pending. R. S. c. 82, § 23. When an appeal is taken from a final decree, any justice may also make such order for the appointment of receivers, for injunction and prohibition, or for continuing the same in force, and such other orders as are needful for protection of the rights of the parties, or as are usual in equity proceedings in such cases, until the appeal is determined by the law court. Such orders may be modified or annulled by such justice, or by such law court, while the appeal is pending before it.

Sec. 55. Appeal from interlocutory decree. R. S. c. 82, § 24. An appeal may be claimed and taken in like manner from any interlocutory decree or order, but such appeal shall not suspend any proceedings under such decree or order, or in the cause, and shall not be taken to the law court until after final decree. Upon an appeal from a final decree, all previous decrees and orders are open for revision, reversal or approval.

See § 72; *80 Me. 100; 90 Me. 467; *95 Me. 253; *96 Me. 44; 125 Me. 403.

Sec. 56. Justice may report cause. R. S. c. 82, § 25. Upon a hearing in any cause in equity, the justice hearing the same may report the cause to the next term of the law court, if he is of the opinion that any question of law is involved, of sufficient importance or doubt to justify the same, and the parties agree thereto. The cause shall be entered and copies furnished by the plaintiff and shall be heard and decided by said law court in like manner and with like results as is herein provided in case of appeals.

*75 Me. 417; *78 Me. 337; 82 Me. 250; 83 Me. 190; 119 Me. 143.

Sec. 57. Justice may grant further time for appeal. R. S. c. 82, § 26. If any party intending to appeal, by accident or mistake, fails to do so, within the time limited therefor, he may within thirty days after the entry of the decree apply to any justice for leave to take such appeal, which may be granted on such terms as appear just and equitable.

Sec. 58. Exceptions; justice to give separate findings of law and fact; other proceedings not suspended. R. S. c. 82, § 27. Either party aggrieved may take exceptions to any ruling of law made by a single justice, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within the time allowed for appeal, and shall be made up, allowed, and filed in the time provided therefor, unless further time is granted by the court, or by agreement of parties. In all other respects, such exceptions shall be taken, entered in the law court, and there heard and decided like appeals, with the same power in the single justice to make orders for injunction and prohibition, and the protection of the rights of the parties; and in the law court, to make orders and decrees pending the same and upon decision thereof; provided, that no question of fact is open to the law court on such exceptions. And upon request of

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either party, the justice hearing the cause shall give separate findings of law and fact. The allowance and hearing of exceptions shall not suspend the other proceedings in the cause.

See § 72; 78 Me. 337; *80 Me. 100; *88 Me. 359; 89 Me. 21; 90 Me. 468; *95 Me. 253; *107 Me. 150; 125 Me. 403.

Sec. 59. Date of order and decree. R. S. c. 82, § 28. Every order and decree shall bear date upon the day on which it is filed and entered, and the day of such filing and entering shall be entered by the clerk upon the docket and on the decree.

*82 Me. 204; *107 Me. 70.

Sec. 60. Issuance of process to enforce final decree. R. S. c. 82, § 29. No process for enforcement of a final decree save for the appointment of receivers, for injunction or prohibition, or for continuing the same, shall issue within ten days from the entry of such decree, unless all parties waive an appeal by entry on the clerk's docket, or by writing filed in the cause, or consent in like manner to the issue thereof.

Sec. 61. Judgment, divesting person of real estate, recorded in registry of deeds. R. S. c. 82, § 30. No judgment or decree divesting any person of title to real estate shall be effectual against any person not a party to the action in which such judgment or decree is rendered, and persons not having actual notice thereof, unless a copy of such judgment or decree or so much thereof as relates to the title to such real estate, duly certified by the clerk of courts in and for the county where said judgment or decree is rendered, is, within thirty days after the rendering of such judgment or decree, duly recorded in the registry of deeds in the county or district in which such real estate is situated.

See c. 15, § 18; c. 126, § 3; 94 Me. 322; 108 Me. 320.

Sec. 62. Hearings. R. S. c. 82, § 31. Hearings and trials in equity cases may be had, and orders and decrees may be passed, at such place in any county as the justice applied to may appoint; and the clerk in the county in which the case is pending shall transmit the papers in the case to the justice to hear the same; and such justice shall return them after hearing with his orders and decrees therein to be filed and entered in such county.

Sec. 63. Evidence in court below, reported; no witnesses heard orally in law court. R. S. c. 82, § 32. All evidence before the court below, or an abstract thereof, approved by the justice hearing the case, shall on appeal be reported. No witnesses shall be heard orally before the law court as a part of the case on appeal, but the court may, in such manner and on such terms as it deems proper, authorize additional evidence to be taken when the same has been omitted by accident or mistake, or discovered after the hearing.

*100 Me. 273; *125 Me. 208.

Sec. 64. Jury trial in equity; procedure. R. S. c. 82, § 33. 1929, c. 141, § 15. The court may, in its discretion and upon application of either party, frame issues of fact in equity causes, to be tried by a jury in the superior court in the county where such cause is pending. The presiding justice may confirm any verdicts rendered upon such issue or issues as were submitted to the jury and enter appropriate decrees thereon, or he may set aside such verdicts, and render such decrees as equity requires, as if such issues had not been framed. Further action may then be taken by such presiding justice or the cause may be further heard by any justice of the supreme judicial court or of the superior court. In all causes where such issues are framed and tried, an appeal may be taken, and exceptions had to rulings of law, as hereinbefore provided, and upon such appeal or exception, the law court may confirm or

set aside the verdicts rendered in the cause, or order a new trial of such issues, and make such disposal of the case as equity demands. All such appeals and exceptions shall be taken, heard and determined as provided by this chapter.

65 Me. 447; 75 Me. 417; 80 Me. 175; 118 Me. 119; 120 Me. 153.

Sec. 65. Writs of seizin or execution, etc., may issue. R. S. c. 82, § 34. Writs of seizin or execution, and all other processes appropriate to causes in equity, may be issued by the court, to enforce its decrees.

Sec. 66. Preliminary injunctions may be granted plaintiff. R. S. c. 82, § 35. Preliminary injunctions may be granted by a single justice in term time or in vacation, upon the plaintiff filing a bond with sufficient sureties conditioned to pay all damages and costs caused thereby, if he is finally found not entitled to such injunction, unless a single justice, on motion to dissolve the same and hearing on the merits thereof, refuses to dissolve it. Such damages and costs shall be awarded by the court on motion, but if not so awarded before final decree, they may be determined in a suit on such bond. Such injunction may also be granted to either party on hearing, without bond, upon oral evidence, depositions, or affidavits, and upon such notice and with such time for pleading, evidence and hearing as the court directs. No preliminary injunction shall be granted to either party unless his pleadings contain an application therefor; but an injunction may be granted pending the suit, in proper cases, upon motion and hearing. Perpetual injunctions may be granted by the court or any justice thereof making final decree.

*42 Me. 127; 49 Me. 322, 398; 54 Me. 404; 55 Me. 551; 60 Me. 194, 336; 81 Me. 305; 87 Me. 187; *119 Me. 500.

Sec. 67. Summary process, when decree is disobeyed; proceedings, and punishment for contempt. R. S. c. 82, § 36. Whenever a party complains in writing, and under oath, that the process, decree, or order of court, which is not for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring such person to appear on a day certain and show cause why he should not be adjudged guilty of contempt, and such process shall fix a time for answer to the complaint, and may fix a time for hearing on oral testimony, depositions, or affidavits, or may fix successive times for proof, counter proof, and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may, for good cause, enlarge the time for such hearing. If the person so summoned does not appear as directed, or does not attend the hearing at the time appointed therefor, as enlarged, or if, upon hearing, he is found guilty of such disregard or disobedience, he shall be adjudged in contempt, and the court may issue a capias to bring him before it to receive sentence, and may punish him by such reasonable fine or imprisonment as the case requires. The court may allow such offender to give bail to appear at a time certain, when such punishment may be imposed, if he continues in contempt. But when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail shall be allowed. When such person purges himself of his contempt, the justice may remit such fine or imprisonment or any portion thereof. No appeal lies from any order or decree for such punishment, nor shall exceptions thereto be allowed, save upon questions of jurisdiction, nor in any case shall such exceptions suspend the enforcement of any such order or decree, unless the court so directs.

49 Me. 399; 60 Me. 334.

Sec. 68. Exceptions certified as frivolous; proceedings. R. S. c. 82, § 37. When a justice deems any exceptions allowed by him, or any appeal in a pro-

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ceeding in equity, frivolous and intended for delay, he may so certify on the motion of the party not excepting, and such exceptions and appeal and the record connected therewith shall be transmitted to the chief justice, and be argued in writing on both sides within thirty days thereafter, unless the justice transmitting the same, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of courts of the county where the cause is pending; and if the decision is adverse to the party taking such appeal or exceptions, treble costs may be allowed the prevailing party.

83 Me. 406; 101 Me. 334.

Sec. 69. Absent defendant not served with process to have review within one year; proceedings. R. S. c. 82, § 38. In case of any decree, an absent defendant whose property has been attached and who does not appear by the record to have been served with process within the state and has made no appearance before final process, shall have a review within one year after final decree as of right, with stay or supersedeas of such process. The defendant may in such case apply to any justice by petition setting forth the grounds for such review, whereupon, if such justice orders reasonable notice to the other party to appear at a time and place named therein, to show cause why such review should not be granted, when such review is granted, the justice may prescribe the time in which the defendant's defense shall be made. Reviews may also be granted on petition, whenever, by fraud, accident, or mistake, and without fault of the party against whom the decree was ordered, justice has not been done; provided, that the petition therefor is filed within six years after final decree; and notice may be ordered and served with like rights of stay or supersedeas as herein provided. Upon granting the review, the court may fix a time within which the next proceeding shall be had.

107 Me. 73.

Sec. 70. Revisory power of court, save on appeal, not abridged. R. S. c. 82, § 39. Nothing herein contained abridges the power of the court to hold all interlocutory orders and decrees subject to revision, at any time before final decree, except when they have been decided on appeal.

107 Me. 73.

Sec. 71. Rules of practice in equity cases. R. S. c. 82, § 40. The supreme judicial court shall make all proper rules for the regulation of equity practice necessary to simplify proceedings, discourage delays, and lessen the expense of litigation, and it has full power for that purpose; but no rule of court now existing is repealed hereby, except so far as it is inconsistent herewith.

Miscellaneous Provisions.

Sec. 72. Proceedings in case of death or disability of presiding justice. R. S. c. 82, § 56. In case of physical or mental disability, death, resignation, or removal of the justice presiding at any civil or criminal proceeding before the supreme judicial court or the superior court, or at a hearing in equity, in which a motion for new trial is made, exceptions presented or appeal taken, any justice of the supreme judicial court or of the superior court may, upon motion, and after notice and hearing, allow the exceptions, and upon request of the moving party, order the official stenographer to furnish a certified copy of the evidence required under the motion or appeal, and such portion thereof as may be made a part of the exceptions.

*117 Me. 534; 118 Me. 63, 168.

Sec. 73. Exceptions intended for delay, overruled. R. S. c. 82, § 57. When exceptions are certified and transmitted to the chief justice as frivolous and intended for delay, and are not argued by the excepting party within thirty days thereafter or within such further time as the presiding justice shall have allowed therefor, they may be at once overruled for want of prosecution.

119 Me. 15.

Sec. 74. Copies, in law cases, may be printed or written. R. S. c. 82, § 59. In all cases taken to the law court for argument and decision, except appeals by attorneys at law from judgments of court rendered against them on information, all copies of the case, abstracts containing the substance of all the material facts, pleadings, and documents on which the parties rely, may either be printed or fairly and legibly written on good paper.

See c. 93, § 41.

Sec. 75. Counsel to file three copies of brief in all cases argued before law court. R. S. c. 82, § 60. In each case argued before the law court, counsel shall file with the clerk of the court where such case is heard, three copies of their respective briefs, if printed, and the clerk, at the expense of his county, shall cause the same to be bound in three equal volumes of convenient size, properly paged, indexed, and labeled, and shall deposit one each of said volumes in the respective county law libraries at Augusta, Bangor and Portland.

Sec. 76. Active retired justices of supreme judicial and superior courts. 1923, cc. 47, 156. 1927, c. 55. 1929, c. 141, § 8. Any justice of the supreme judicial court or of the superior court who having attained the age of seventy years and having served as such justice for at least seven consecutive years resigns his said office, or ceases to serve at the expiration of any term thereof, shall be eligible for appointment as an active retired justice of such court as hereinafter provided. The governor with the advice and consent of the council may upon being notified of the retirement of any such justice under the provisions of this section appoint such justice to be an active retired justice of the supreme judicial court or of the superior court as the case may be, for a term of seven years from such appointment, unless sooner removed, and such justice so appointed and designated shall thereupon constitute a part of the court from which he has retired and shall have the same jurisdiction and be subject to the same restrictions therein as before retirement, except that he shall act only in such cases and matters and hold court only at such terms and times as he may be directed and assigned to by the chief justice of the supreme judicial court, and said chief justice is hereby empowered and authorized to so assign and designate any such active retired justice of the supreme judicial court as to his services and may direct as to which term of the law court he shall attend, and if the chief justice so orders, he may hear all matters and issue all orders, notices, decrees, and judgments in vacation that any justice of the supreme judicial court or of the superior court is authorized to hear or issue, either at law or in equity. Any active retired justice of the superior court may be directed by the chief justice to hold any term of the superior court in any county and when so directed shall have authority and jurisdiction therein the same as if he were the regular justice of said court; and whenever the chief justice of the supreme judicial court so orders, may hear all matters and issue all orders, notices, and decrees and judgments in vacation that any justice of said superior court is authorized to hear and issue.

The provisions of this paragraph shall apply to present and former justices of said courts. Provided, however, that such justice shall within one year after attaining the age of seventy years, and serving as such justice for at least seven consecutive years, cease to serve as such justice.

See c. 125, § 8.

Sec. 77. Legal holidays. R. S. c. 82, § 52. 1923, c. 50, § 3. 1929, c. 218. No court shall be held on Sunday, or any day designated for the annual thanksgiving, or for the choice of presidential electors, Washington's birthday, February twenty-second, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September, the day of the state election, Armistice day, November eleventh, or on Christmas day; and when the time fixed for a term of said court falls on either of said days, it shall stand adjourned until the next day, which shall be deemed the first day of the term for all purposes. The public offices in county buildings may be closed to business on the above named holidays.

78 Me. 502, 582.

Attorney-General.

Sec. 78. Duties of attorney-general. R. S. c. 82, § 62. The attorney-general shall appear for the state, the secretary of state, the treasurer of state, the bank commissioner, the insurance commissioner, the head of any other state department, and the state boards and commissions, in all suits and other civil proceedings in which the state is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the state; and in such suits and proceedings before any other tribunal when requested by the governor or by the legislature or either branch thereof. All such suits and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses, or other processes served upon such officers shall forthwith be transmitted by them to him. All legal services required by such officers, boards, and commissions in matters relating to their official duties shall be rendered by the attorney-general or under his direction. Said officers, boards, and commissions shall not act at the expense of the state as counsel in any suit or proceedings in which the state is interested.

Sec. 79. To prosecute all claims for the state. R. S. c. 82, § 63. All civil actions to recover money for the state shall be brought by the attorney-general or by the county attorney in the name of the state; the attorney-general shall appear before the departments and tribunals of the United States and the committees of congress to prosecute all claims of the state against the United States.

Sec. 80. May prosecute intruders. R. S. c. 82, § 64. He may, if in his judgment the public interest so requires, prosecute by indictment or complaint any person who intrudes on the land, rights or property of the state, or commits or erects a nuisance thereon.

Sec. 81. As to public charities. R. S. c. 82, § 65. He shall enforce due application of funds given or appropriated to public charities within the state, and prevent breaches of trust in the administration thereof.

Sec. 82. To give opinions on questions of law submitted. R. S. c. 82, § 66. He shall give his written opinion upon questions of law submitted to him by the governor and council, secretary of state, treasurer of state, bank commissioner, insurance commissioner, state auditor, or head of any other state department, or any of the state boards or commissions, or by either branch of the legislature.

Sec. 83. Deputy attorney-general and assistant attorneys-general, appointment and duties. R. S. c. 82, § 67. 1919, c. 210. 1923, c. 140. 1925, c. 146. The attorney-general shall appoint a deputy attorney-general, who shall serve during the pleasure of the attorney-general or until a successor is duly appointed and qualified. His office shall be at the capital and he may perform all the duties required of the attorney-general by chapter fifty-six, and such other duties as the attorney-general may require of him. The attorney-general may

also appoint such assistant attorneys-general as the duties of the office may require with such powers and duties as he may delegate. The compensations of the deputy attorney-general and any assistant attorneys-general appointed, shall be fixed by the attorney-general with the approval of the governor and council, but such compensations shall not in the aggregate exceed the amount appropriated therefor. The attorney-general shall biennially designate one of the assistant attorneys-general to assist the members of the legislature in the drafting of acts and resolves. Such assistant attorney-general shall devote all his time during the legislative session to this work, but shall not receive extra compensation therefor. The attorney-general shall also instruct one of his assistant attorneys-general to devote his entire time to the enforcement of the inheritance tax law, except that in the absence or inability to act of the attorney-general and deputy attorney-general he may perform all the duties required of the attorney-general by chapters fifty-six and seventy, and the salary and expenses of such assistant attorney-general shall be paid from the appropriation for salaries and clerk hire of said department.

Sec. 84. Attorney-general authorized to employ clerks, and allowed office expenses. 1923, c. 107. The attorney-general is authorized to employ in his office in addition to the officers named in section eighty-three, additional clerks as the business of his office may demand, whose appointment and compensation shall be subject to the approval of the governor and council. He may also incur a reasonable expense for postage, printing, stationery, and other office expenses.

Sec. 85. Additional assistant attorneys-general, clerks, or attorneys appointed by attorney-general may be paid from moneys collected by department. 1925, c. 199. Whenever the attorney-general shall appoint any additional assistant attorneys-general as authorized under section eighty-three, or shall employ additional clerks as provided by section eighty-four, or shall employ attorneys at law to collect claims due the state, the compensation of such assistants, clerks, or attorneys, as approved by the governor and council, may be paid, if the governor and council so direct, from moneys thus collected by the attorney-general's department.

Sec. 86. Attorney-general to consult with and advise county attorneys. R. S. c. 82, § 68. The attorney-general shall consult with and advise the county attorneys in matters relating to their duties; and if in his judgment the public interest so requires, he shall assist them by attending the grand jury in the examination of a case in which the accused is charged with treason or murder, and appear for the state in the trial of indictments for treason or murder. He may also institute and conduct prosecutions for all offenses against the provisions of chapters six, seven, eight, nine, and ten, and for that purpose attend and present evidence to grand juries and assist them in the examination of witnesses and drawing indictments.

Sec. 87. To attend law courts and instruct county attorneys. R. S. c. 82, § 69. The attorney-general, when practicable, shall attend all terms of the law court, and all trials of persons indicted for treason or murder, on notice from the clerk, and give all proper instructions to county attorneys when he is absent, and at other times.

See c. 93, § 17.

Sec. 88. Cause witnesses to recognize, and procure attendance of those out of state. R. S. c. 82, § 70. When a criminal prosecution, in which he appears, is continued, he shall cause the witnesses in behalf of the state to recognize to appear at the next term, unless otherwise directed by the court, and may procure the attendance of a witness living out of the state deemed by him material in

procuring an indictment or conviction; and the court shall allow such witness a reasonable compensation beyond his legal fees.

Sec. 89. May employ detectives. R. S. c. 82, § 71. The attorney-general may, by himself or through the several county attorneys or other officers of the state, employ such detectives or other persons, offer rewards or use other means that he may deem advisable, for the detection, arrest and apprehension of persons who commit crime in this state.

See c. 147, § 57.

Sec. 90. Appropriation. R. S. c. 82, § 72. 1917, c. 283. 1919, c. 229. 1929, c. 185. Such sum as may be appropriated for the purposes of sections seventy-eight to eighty-nine inclusive may be expended under the direction of the attorney-general. The governor and council may draw their warrants from time to time, for the expenditure of said sum upon the presentation of bills properly avouched by the attorney-general. The attorney-general shall at the request of any state department, make or cause to be made investigations in behalf of such department and he shall also prosecute any case to such extent as may seem advisable with all the rights, powers and privileges of county attorneys; and the expense of any such investigation and of any prosecution which results from such investigation shall be charged to this appropriation.

Sec. 91. Annual report. R. S. c. 82, § 73. The attorney-general shall, annually, on the first day of December, make a report to the governor and council of the amount and kind of official business done by him, and by the several county attorneys during the year preceding, stating the number of persons prosecuted, their alleged offenses, the results, and the punishments awarded, with any useful suggestions.

See c. 93, § 20.

Sec. 92. Not to receive pay from prosecutor. R. S. c. 82, § 74. He shall not receive any fee or reward, from or in behalf of any prosecutor, for official services, or, during the pendency of a prosecution, be engaged as counsel or attorney for either party in a civil action depending essentially on the same facts.

Reporter of Decisions.

Sec. 93. Reporter; appointment and tenure of office. R. S. c. 82, § 75. The governor, with the advice and consent of the council, shall, in case of a vacancy, appoint a person learned in the law, to be reporter of the decisions of the law court, who shall hold his office during the pleasure of the executive.

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Sec. 94. Duties. R. S. c. 82, § 76. 1917, c. 280. 1919, c. 192. 1921, c. 18. The reporter of decisions shall, by his personal attendance at law court when practicable, or by the best other means in his power, prepare correct reports of all legal questions argued and decided, reporting cases more or less at large according to his judgment of their importance. He shall publish at least one volume yearly, provided he has material enough to make a volume of the size required by this section, and furnish the usual number of current copies to the state and to the public at the price of three dollars a volume in buckram binding and four dollars a volume in leather binding. Each volume shall be of the average size of volume eighty-three, Maine Reports, and be equal thereto in paper, printing, general finish, and quantity of printed matter. The reporter may, from time to time, as he sees fit, make a written contract in his own name with any person, firm, or corporation for the printing, publishing, and binding of said reports and shall require such person, firm, or corporation to give a

good and sufficient bond with good and sufficient sureties, conditioned for the faithful performance of all the terms and conditions of such contract by the person, firm, or corporation with whom the reporter makes such contract. In case of a breach of any or all the conditions of such bond, the reporter may maintain an action on such bond in his own name.

Sec. 95. Copyright of reports. R. S. c. 82, § 77. 1921, c. 168. Each volume of said reports shall be entered by the secretary of state with the librarian of congress, and copyrighted in the name of the state of Maine, and the manuscript and copyright thereof shall belong to the state. All profits arising from the publication and sale of said reports and advanced sheets thereof received by said reporter, except as hereinafter provided, shall be accounted for and paid over by him to the treasurer of state on the first Monday in December in each year. But the reporter may retain out of said profits received by him the sum of five hundred dollars, each year, for clerk hire, stationery, postage, expressage, and incidental expenses. At the expiration of his term of office, all the official duties of the reporter shall cease, and he shall turn over and deliver to his successor all unpublished cases in his hands, and shall also assign and transfer to his successor any contract and bond he then may have relating to a volume not then completed or commenced. And such successor's rights in and under such contract and bond shall be the same as though he had originally made the contract and taken the bond.

Sec. 96. To furnish advance sheets free to all justices. R. S. c. 82, § 78. The reporter shall furnish free of charge the justices of the supreme judicial court and superior court with one copy each of advance sheets; he shall also be entitled to twenty-five copies, free of expense, for current exchanges with the reporters of other states, law school libraries, the attorney-general, and heads of departments.

CHAPTER 92.

County Commissioners.

- Sections 1- 4 Election and Tenure of Office.
- Sections 5- 6 Regular Sessions and Clerk.
- Sections 7-27 Powers and Duties.

Election and Tenure of Office.

Sec. 1. Constitution of board; chairman. R. S. c. 83, § 1. There shall be a board of commissioners for each county, consisting of a chairman and two other citizens resident in the county, elected, or, in case of a vacancy, appointed by the governor, with the advice and consent of the council. The chairman shall be designated by them at their first meeting on or after the first day of January annually, to act for one year.

Sec. 2. Vacancies at expiration of term. R. S. c. 83, § 2. Vacancies to occur by expiration of the term of office at the end of any year in which a biennial election is held, shall be filled by election on the second Monday of September, in such year. If but one is elected, he shall hold the office for six years; if two, the one having the highest number of votes shall hold for six years, and the next highest for four years; if three, two shall hold as last provided, and the