

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
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state tax assessor until such time as said town or plantation is reorganized but in no event for more than 5 years. Said state tax assessor shall have the power and authority to assess taxes at any time after the act terminating the organization of the town or plantation becomes operative, by making assessment once a year under the laws now relating to the assessment of taxes in towns by assessors, and committing the same to the treasurer of state for collection, and said treasurer of state shall have the same power and authority to enforce the collection of said taxes as is now provided for the collection of state taxes so committed. All moneys received by virtue of said assessment and collection as aforesaid shall be applied to the payment of necessary expenses of the state tax assessor in making such assessment, and to the payment of any obligations of said town or plantation outstanding at the time of termination of its organization, and to the payment of state and county taxes assessed against such town or plantation, and for the completion of any public works of said town or plantation already begun, and when in the best judgment of said state tax assessor final payment of all known accounts against said town, which has been heretofore or may be deorganized, has been made, or at the end of said period of 5 years, any funds unexpended, if any exist, shall be deposited by the former town, if still in its possession, or by the treasurer of state if in his possession, with the county commissioners as an offset against future road taxes in such deorganized town, as already set forth in section 62 of chapter 79. If no road maintenance as above described exists in said town, said unexpended funds shall be expended on repairs, maintenance, or restoration of such town enterprise as may be designated by the state tax assessor in his capacity as hereinbefore described in this section.

Sec. 14. Records of deorganized municipalities to be surrendered. 1941, c. 161. 1943, c. 222. Whenever any city, town, or plantation within this state shall become deorganized, the city, town, or plantation records shall be surrendered: all records of birth, marriage, and death to the state registrar of vital statistics at Augusta, and all other municipal records to the county commissioners in the county in which the municipality was located.

Sec. 15. Sections 1-15 to apply to unincorporated areas. 1937, c. 233, § 5. The provisions of this chapter shall apply to any towns or plantations that may be or may have been deorganized by act of the legislature.

CHAPTER 91.

SUPREME JUDICIAL COURT.

Sections 1-7 Supreme Judicial Court; Constitution and General Jurisdiction.

Sections 8-19 Law Court.

Supreme Judicial Court; Constitution and General Jurisdiction

See 1931, c. 216, Art. I, § 1, re judiciary not affected by code.

Sec. 1. Constitution of the court. R. S. c. 91, § 1. The supreme judicial court, as heretofore established, shall consist of a chief justice and 5 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.

See Const. of Me., Art. V, Part 1, § 8, re appointment; Const. of Me., Art. VI, § 1, re court system; Const. of Me., Art. VI, § 4, re term of office; 73 Me. 224; 98 Me. 130.

Sec. 2. Appointment of additional justices provided for. 1933, c. 250, § 1. Whenever the chief justice of the supreme judicial court, or, in the event of his disability, any associate justice thereof, has reason to believe that any justice of the supreme judicial or superior court is totally and permanently disabled by reason of physical or mental incapacity, and because thereof is unable to perform the duties of his office, he shall cause a commission of 3 competent disinterested members of the medical profession to make due inquiry and examination into the facts and report thereon to the supreme judicial court. Upon receiving said report, he shall thereupon call a meeting of said court and submit to them the report of said medical commission. The court shall thereupon, upon said report and such other evidence as they may deem necessary, if any, determine the facts in relation thereto. If said court find that said justice of the supreme judicial or superior court is permanently and totally disabled, by reason of physical or mental incapacity, and because thereof is unable to perform the duties of his office, the chief justice shall certify said fact to the governor and council. Upon receipt of such certificate from the court, the governor and council shall make due inquiry into the matter and, if they confirm the finding of said court, the governor with the advice and consent of the council shall appoint an additional justice of the supreme judicial or superior court, as the case may be.

Sec. 3. When vacancies shall not be filled. 1933, c. 250, § 2. No vacancy in the supreme judicial or superior court caused by the death or expiration of the term of said incapacitated justice shall be filled, if thereby the number of justices qualified and capable of acting would be in excess of that otherwise provided by law as constituting said court.

Sec. 4. Salary of justices; expenses; clerical assistance. R. S. c. 125, § 3. 1931, c. 216, Art. II, § 10. The justices of the supreme judicial court shall each receive an annual salary of \$8,000, and the chief justice of the supreme judicial court shall receive an annual salary of \$9,000. Each justice shall be reimbursed by the state for his expenses actually and reasonably incurred in attending meetings and the sessions of the law court, appointed by the chief justice under the provisions of section 10, upon presentation to the state controller of a detailed statement of such expenses. When any justice of said court holds nisi prius terms of the superior court in any town other than the town in which he resides, or when any hearing of a cause in law or in equity is had before a justice of the supreme judicial court other than one residing in the town where said hearing is had, such justice shall be reimbursed by the state for his expenses actually and reasonably incurred in holding such terms, or in attending said hearing, upon presentation to the state controller of a detailed statement of such expenses. The counties wherein such justices reside, have their offices, or are holding court shall also receive from the state the expenses necessarily incurred by such justices for postage, stationery, express, and telephone tolls. Each justice of said court shall be reimbursed by the state for expenses actually and reasonably incurred by him for clerical assistance, upon presentation to the state controller of an itemized statement of such expenses; but the total of such expenses of all of the justices of said court for clerical assistance shall not exceed \$10,000 in any 1 year.

Sec. 5. Compensation of judges upon retirement. R. S. c. 125, § 5. 1941, c. 263. 1943, c. 332. Any justice of the supreme judicial court, who, having attained the age of at least 70 years, and having served as such justice on either the supreme judicial court or the superior court or both of said courts for at

least 7 consecutive years, resigns his said office or ceases to serve at the expiration of any term thereof, shall receive, whether or not appointed an active retired justice, an amount equal to $\frac{3}{4}$ of the salary, which shall by law be payable annually to the justices of said court who attain the age of at least 70 years, annually during the remainder of his life, to be paid in the same manner as the salaries of the justices of said court are paid. The provisions of this section shall apply to the present and former justices of said court who have or who shall have attained the age of at least 70 years. Provided, however, that such justice within 2 years after attaining the age of at least 70 years and serving as such justice for at least 7 consecutive years has ceased or shall cease to serve as such justice. Any justice of the supreme judicial court who, having attained the age of at least 70 years and having served as such justice of either the supreme judicial court or the superior court or both of said courts for at least 7 consecutive years, continues to serve as such justice for more than 2 years, shall waive his right to the compensation mentioned and shall make no claim therefor at the close of his term of service as such justice, whether such term of service is ended by resignation or by the expiration of the term for which he is appointed.

Compensation herein provided shall not be made available to any of said justices who after retirement act as attorney or counselor in any action or legal proceeding in which the state is an adverse party or has any interest adverse to the person or persons in whose behalf said justice acts as attorney or counselor; provided, however, that the provisions of this paragraph shall apply only to justices appointed subsequent to July 26, 1941.

Sec. 6. Active retired justices of supreme judicial court. R. S. c. 91, § 76. 1943, c. 65. Any justice of the supreme judicial court, who, having attained the age of 70 years and having served as such justice on either or both the supreme judicial court or of the superior court for at least 7 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 the supreme judicial 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 for a term of 7 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 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 is authorized to hear or issue, either at law or in equity.

The provisions of this section shall apply to the present and former justices of said court. Provided, however, that such justice shall within 1 year after attaining the age of 70 years, and serving as such justice for at least 7 consecutive years, cease to serve as such justice.

See c. 100, § 185, re stenographers.

Sec. 7. General jurisdiction; control of records. R. S. c. 91, § 2. 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. 25, § 45; c. 92, § 4, re reporter of decisions to furnish advance sheets; c. 94, § 1, re constitution of superior court; c. 94, § 6, re judicial notice of superior court rules; c. 94, § 7, re conferences of justices; c. 168, § 7; 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; 128 Me. 108.

Law Court

Sec. 8. Constitution of law court; concurrence required. R. S. c. 91, § 3. 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. 9. Justice not to sit in review of causes tried before him. R. S. c. 91, § 4. 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. 10. Sessions of law court. R. S. c. 91, § 5. For the purpose of the law court the state shall constitute 1 district. The court shall hold 8 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 1st of each year.

Sec. 11. All pending cases marked "law" to be certified to clerk; how entered and determined. R. S. c. 91, § 6. At least 10 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. 12. Clerks of terms of law court; duties; compensation; expenses of county. R. S. c. 91, § 7. 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 \$1,500 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. 13. Messenger in Cumberland county. R. S. c. 91, § 8. 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, but shall not exceed, the amount allowed to the messenger for the supreme judicial court on July 13, 1929.

Sec. 14. Jurisdiction of law court; disposition of cases; technical errors in pleading and procedure. R. S. c. 91, § 9. 1941, c. 86. 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.

When the issues of law presented in any case before the law court can be clearly understood, they shall be decided, and no case shall be dismissed by the law court for technical errors in pleading alone, or for want of proper procedure, if the record of the case presents the merits of the controversy between the parties. Whenever, in the opinion of the law court, the ends of justice require, it may remand any case to the court below, or to any justice thereof in term time or vacation, for the correction of any errors in pleading or procedure. In

remanding said case, the law court may set the time within which said correction shall be made and said case reentered in the law court.

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; *121; *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; 128 Me. 523; 129 Me. 81; 130 Me. 288; 133 Me. 276; 135 Me. 459; 136 Me. 103.

Sec. 15. Arguments in writing. R. S. c. 91, § 10. 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. 16. Complaint for not entering cases on law docket. R. S. c. 91, § 11. When cases mentioned in section 14 are not entered on the docket of the law court within the first 2 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. 17. Entry of judgment; attachments and rights to disclose preserved; proceedings on death of party. R. S. c. 91, § 12. 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 30 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. 100, § 57, re executor etc., may appear; c. 152, §§ 7, 13, re proceedings when party to an action dies; 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. 18. Attachments continue in certain cases, on death of plaintiff; if defendant has been arrested, proceedings. R. S. c. 91, § 13. When a plaintiff dies before the expiration of 30 days from the rendition of judgment in his favor, or before the expiration of 30 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 90 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.

Sec. 19. Copies, in law cases, may be printed or written. R. S. c. 91, § 74. 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, § 18, re removal of unworthy attorneys; appeal.

CHAPTER 92.

REPORTER OF DECISIONS.

Sec. 1. Reporter; appointment and tenure of office; salary. R. S. c. 91, § 93; c. 125, § 7. 1937, c. 35. 1943, c. 245. 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. He shall receive an annual salary of \$2,000.

72 Me. 543, 565.

Sec. 2. Duties. R. S. c. 91, § 94. 1943, c. 64. The reporter of decisions shall 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 1 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 a price to be fixed by the governor and council. Each volume shall be of the average size of 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 of the conditions of such bond, the reporter may maintain an action on such bond in his own name.

See c. 91, § 14, re law court cases.

Sec. 3. Copyright of reports. R. S. c. 91, § 95. 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 1st Monday in December in each year. The reporter may retain out of said profits received by him the sum of \$500 each year for clerk hire, stationery, postage, expressage, and incidental expenses. At the expiration of his