

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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from the roll of attorneys of the state. No person whose resignation from his office of attorney and counselor at law has been accepted by a justice of the supreme judicial court, as aforesaid, shall be readmitted to the practice of law in any of the courts of the state or entitled to practice law within said state unless and until he shall have been reinstated as an attorney and counselor at law by a justice of the supreme judicial court. The procedure for such reinstatement shall be the same as in the case of attorneys who have been disbarred.

Sec. 22. Penalty for falsely advertising or representing himself to be an attorney or counselor. R. S. c. 93, § 44. If any person who has not been admitted to practice law in this state, or whose name has been struck from the roll of attorneys, advertises as or represents himself to be an attorney or counselor at law, he shall be punished by a fine of not more than \$500, or by imprisonment for not more than 3 months.

Sec. 23. Management of causes by parties or counsel. R. S. c. 93, § 45-1931, c. 176, § 5. Parties may plead and manage their own causes in court or do so by the aid of such counsel, not exceeding 2 on a side, as they see fit to employ; but no person whose name has been struck from the roll of attorneys for misconduct shall plead or manage causes in court under a power of attorney for any other party, or be eligible for appointment as a trial justice or justice of the peace.

33 Me. 358; 36 Me. 339; 72 Me. 411.

CHAPTER 94.

SUPERIOR COURT.

See c. 16, § 3; 1931, c. 216, Art. I, § 1.

Sections 1-20 Superior Court; Constitution, General Jurisdiction, and Powers.

Sections 21-24 Naturalization and Citizenship.

Superior Court; Constitution, General Jurisdiction, and Powers

Sec. 1. Constitution of the court. R. S. c. 91, § 14. The superior court, as heretofore established, shall consist of 7 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.

See Const. of Me., Art. V, Part 1, § 8, re appointment; Const. of Me., Art. VI, § 4, re term of office; c. 91, § 2, re appointment of additional judges; c. 92, § 4, re reporter of decisions to furnish advance sheets; 129 Me. 474.

Sec. 2. Salary of justices; expenses. R. S. c. 125, § 4. Each of the justices of the superior court shall receive an annual salary of \$7,500. All provisions of section 4 of chapter 91, relating to reimbursement of justices of the supreme judicial court for expenses incurred by them shall apply to justices of the superior court, except that justices of the superior court shall not be entitled to reimbursement for expenses incurred in employing clerical assistance.

Sec. 3. Compensation of judges upon retirement. R. S. c. 125, § 5. 1941, c. 263. 1943, c. 332. Any justice of the superior court who, having attained the age of at least 70 years, and having served as such justice 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 superior court who, having attained the age of at least 70 years and having served as such justice of said court for at least 7 consecutive years, continues to serve as such justice for more than 2 years, shall waive his right to the compensation hereinbefore 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. 4. Active retired justices of superior court. R. S. c. 91, § 76. 1943, c. 65. Any justice of the superior court who having attained the age of 70 years and having served as such justice on either or both the supreme judicial court or 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 superior 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 superior 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. 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, decrees, and judgments in vacation that any justice of said superior court is authorized to hear and issue.

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. 5. Jurisdiction; powers. R. S. c. 91, § 15. The superior 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 were, prior to January 1st, 1930, 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 by law, 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.

100 Me. 63; 114 Me. 61; 128 Me. 441; 128 Me. 443; 129 Me. 317; 136 Me. 65.

Sec. 6. Justices of superior court may adopt rules; judicial notice by supreme judicial court. R. S. c. 91, § 16. 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 the provisions of this chapter. The supreme judicial court shall take judicial notice of the rules of the superior court.

136 Me. 513.

Sec. 7. Conferences of justices. R. S. c. 91, § 17. 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. 8. Clerk of the superior court. R. S. c. 91, § 18. 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 at any or either session thereof in that county.

Sec. 9. Seal; form of writs and processes. R. S. c. 91, § 19. 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 1st, 1930 may be reissued bearing the teste of any justice of the superior court and under the seal of said court.

129 Me. 474; 130 Me. 213; 137 Me. 91.

Sec. 10. Writs when returnable. R. S. c. 91, § 20. 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 3 terms to be begun and held after the issuing thereof, and in the counties of Androscoggin, Kennebec, and Penobscot at one of the next 2 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 14 days after the issuing thereof.

Sec. 11. Trial terms. R. S. c. 91, § 21. 1931, c. 15; c. 96, §§ 1, 2; c. 209, § 1; c. 219. 1933, c. 237, § 1. 1943, c. 138. 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:

I. (1931, c. 96, § 1) Androscoggin: At Auburn on the 1st Tuesdays of January, March, April, June, September, and November for civil and criminal business, provided that the grand jury shall attend only at the January, June, and September 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.

II. (1931, c. 219) (1943, c. 138) Aroostook: At Houlton on the 1st Tuesday of November for civil and criminal business, and at Caribou on the 1st Tuesday of February and 2nd Tuesday of September for civil business only.

III. Cumberland: At Portland on the 1st Tuesday of every month except July and August; but the criminal business of said county shall be transacted at the terms held on the 1st 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 7 days before the convening of the next succeeding term in which criminal business may be done.

IV. (1931, c. 96, § 2) (1933, c. 237, § 1) Franklin: At Farmington on the 2nd Tuesday of February, 2nd Tuesday of May, and 2nd Tuesday of October; the May term shall be held without a grand jury and with but 1 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.

V. (1933, c. 237, § 1) Hancock: At Ellsworth on the 2nd Tuesdays of April and September.

VI. (1933, c. 237, § 1) Kennebec: At Augusta on the 1st Tuesdays of February, April, June, and October, but the criminal business of said county shall be transacted at the terms held on the 1st Tuesdays of February, June, and October, together with civil business.

VII. (1933, c. 237, § 1) Knox: At Rockland on the 2nd Tuesday of February, and the 1st Tuesdays of May and November.

VIII. (1933, c. 237, § 1) **Lincoln:** At Wiscasset on the 2nd Tuesday of May and 2nd Tuesday of November.

IX. (1933, c. 237, § 1) **Oxford:** At Rumford on the 1st Tuesday of March, and at Paris on the 1st Tuesday of November and on the 2nd Tuesday of June.

X. (1931, c. 15) (1933, c. 237, § 1) **Penobscot:** At Bangor on the 1st Tuesdays of January, April, September, and November and the criminal business of said county shall be transacted at the terms held on the 1st Tuesdays of January, April, and September, together with civil business. 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 April 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.

XI. **Piscataquis:** At Dover-Foxcroft on the 2nd Tuesdays of March and September.

XII. (1933, c. 237, § 1) **Sagadahoc:** At Bath on the 2nd Tuesday of January, the 2nd Tuesday of June, and the 3rd Tuesday of October.

XIII. (1933, c. 237, § 1) **Somerset:** At Skowhegan on the 2nd Tuesday of January, the 2nd Tuesday of May, and the 2nd Tuesday of September.

XIV. (1933, c. 237, § 1) **Waldo:** At Belfast on the 1st Tuesday of January, the 2nd Tuesday of April, and the 2nd Tuesday of October.

XV. (1933, c. 237, § 1) **Washington:** At Machias on the 2nd Tuesday of February and the 2nd Tuesday of October, and at Calais on the 2nd Tuesday of June.

XVI. (1931, c. 209, § 1) **York:** At Alfred on the 2nd Tuesday of January and 1st Tuesdays of May and October.

135 Me. 184.

Sec. 12. Simultaneous and special sessions. R. S. c. 91, § 22. 1933, c. 20. Two or more simultaneous sessions of the superior court may be held in the same county, or special sessions thereof may be held in any 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. Special sessions of the superior court for the transaction of civil or criminal business or both may be held in any county at any time whenever the chief justice of the supreme judicial court determines that public convenience and necessity so require.

Sec. 13. Sheriff or deputy to attend court; justice not attending, court to be adjourned; proceedings. R. S. c. 91, § 23. 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. 14. Exceptions, in civil and criminal cases; proceedings, if they are deemed frivolous; motions for new trial. R. S. c. 91, § 24. When the court is held by 1 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 30 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 30 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. The provisions of this section apply 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 30 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. 328, 366, 445, 448; 125 Me. 91, 458, 526; 131 Me. 499; 132 Me. 230; 135 Me. 70, 79, 344; 136 Me. 401, 451; 137 Me. 137, 148; 138 Me. 98.

Sec. 15. Motions for new trial on ground of newly discovered evidence. 1941, c. 203, § 1. In criminal cases tried in the superior court, motions for new trials on the ground of newly discovered evidence may be filed with the clerk after as well as before judgment, and before or after the adjournment of the term at which judgment is rendered regardless of when the judgment was rendered; but such motions may be filed after judgment only with the consent of a justice of the superior court upon good cause shown and must be filed within 2 years from the date of said judgment.

The clerk shall give immediate written notice of such filing by mail or otherwise to the prosecuting attorney.

The evidence in support thereof, or in rebuttal, or impeachment, shall be taken within such time and in such manner as the court, or any justice thereof in vacation, shall order, and shall be certified to the law court for determination.

Sec. 16. Authority of court. R. S. c. 91, § 25. The 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 law, and the superior court is clothed with all the powers necessary for the performance of all its duties.

Sec. 17. Cases heard by presiding justice. R. S. c. 91, § 26. 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; 133 Me. 378; 136 Me. 178, 330; 137 Me. 148; 138 Me. 303; 139 Me. 331.

Sec. 18. Affidavit in abatement. R. S. c. 91, § 27. 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. 19. Trial to proceed when dilatory pleas are overruled. R. S. c. 91, § 28. 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 the section 14.

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; 130 Me. 417; 131 Me. 499; 132 Me. 55; 133 Me. 241; 136 Me. 367, 371.

Sec. 20. Interest on verdicts and awards. R. S. c. 91, § 29. 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. 21. Jurisdiction of applications for naturalization. R. S. c. 91, § 30. 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. 22. Jurisdiction of petitions for judicial declaration of citizenship; proceedings. R. S. c. 91, § 31. 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. 23. Notice to attorney-general. R. S. c. 91, § 32. 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 14 days prior to the 1st day of the term of court at which said petition is entered and the attorney-general may appear and be heard thereon.

Sec. 24. Change of residence. R. S. c. 91, § 33. 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.

CHAPTER 95.

CONCURRENT JURISDICTION OF SUPREME AND SUPERIOR COURTS.

Section	1	Habeas Corpus and Extraordinary Remedies.
Sections	2-37	Equity.
Sections	38-50	Uniform Declaratory Judgments Act.
Sections	51-57	Miscellaneous Provisions.

Habeas Corpus and Extraordinary Remedies

Sec. 1. Concurrent jurisdiction of supreme judicial court and superior court in habeas corpus and extraordinary remedies. R. S. c. 91, § 34. 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. 2. Concurrent jurisdiction of supreme judicial court and superior court in equity. R. S. c. 91, § 35. 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 1 equity docket in each county, and all equity cases commenced in a county shall be entered consecutively on the equity docket in that county.

128 Me. 528; 134 Me. 116; 135 Me. 190.

Sec. 3. Rules of practice in equity cases. R. S. c. 91, § 71. 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