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Chapter 103.

Supreme Judicial Court.

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Supreme Judicial Court; Constitution and General Jurisdiction.

Sec. 1. Constitution of the court.—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.

The chief justice shall be the head of the judicial department of the state. In the event of his disability for any cause, the senior associate, not under disability, shall perform any and all of his duties. (R. S. c. 91, § 1. 1949, c. 54.)

Cross references.—See Me. Const., Art. 5, Part First, § 8, re appointment; Me. Const., Art. 6, § 1, re court system; Me. Const., Art. 6 § 4, re term of office.

Cited in McKenney v. Alvord, 73 Me. 221; State v. Bangor, 98 Me. 114, 56 A. 589.

Sec. 2. Appointment of additional justices.—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. (R. S. c. 91, § 2.)

Sec. 3. When vacancies shall not be filled.—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. (R. S. c. 91, § 3.)

Sec. 4. Salary of justices; expenses; clerical assistance.—The justices of the supreme judicial court shall each receive an annual salary of $11,000, and the chief justice of the supreme judicial court shall receive an annual salary of $12,000. 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 11, 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 resid-

ing 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. (R. S. 91, § 4. 1945, c. 6; c. 331, § 1. 1949, c. 342.)

Sec. 5. Compensation of justices upon retirement.—Any justice of the supreme judicial court who resigns his office or ceases to serve at the expiration of any term thereof, after attaining the age of 70 years and after having served as a justice on either the supreme judicial court or the superior court, or both, for at least 7 consecutive years, shall receive annually during the remainder of his life, whether or not he is appointed an active retired justice as provided in the following section, an amount equal to ¾ of the salary which was being paid to him at the termination of his service, to be paid in the same manner as the salaries of the justices of said court are paid; provided, however, that such justice shall terminate his service before his 71st birthday, unless he be a justice who has attained or hereafter shall attain the age of 70 years during his continuance in office as such justice under an appointment made prior to August 6, 1949, in which case to be entitled to compensation as aforesaid he shall terminate his service before his 72nd birthday. Any justice who continues to serve until or after the birthday applicable to the termination of his service, as aforesaid, shall waive his right to the compensation hereinbefore mentioned and make no claim therefor at the termination of his service; and the right of any justice drawing such compensation to continue to receive it shall cease immediately if he acts as attorney or counsellor 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 he acts.

If such justice dies in office, or has heretofore died in office, his widow, upon reaching the age of 60 and as long as she remains unmarried, shall annually be entitled to ⅜ of his salary at the time of his death.

Any justice of the supreme judicial court who prior to his retirement age is unable, by reason of failing health, to perform his duties as such justice may, upon petition to or by order of the supreme judicial court and approved by a majority of the justices of the supreme judicial court, be retired prior to his retirement age and when so retired he shall receive the same benefits as he would have received had he retired at full retirement age, and such retirement shall terminate his service.

If such justice dies having terminated his service and having become entitled to compensation as provided in this section, his widow, having reached the age of 60 and as long as she remains unmarried, shall annually be entitled to ½ of the retirement compensation such justice received. (R. S. c. 91, § 5. 1949, c. 369, § 1. 1951, c. 266, § 110. 1953, c. 339.)

Sec. 6. Active retired justices.—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. (R. S. c. 91, § 6. 1945, c. 121, § 2. 1949, c. 139, § 2.)

See c. 113, § 188, re stenographers.

Sec. 7. General jurisdiction; control of records.—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 under the seal of said court, attested by any justice not a party or interested in the suit and signed by the clerk. (R. S. c. 91, § 7.)

I. General Consideration.

II. Superintendence and Writs.

Cross References.

See c. 89, § 97, re approval by chief justice of bond of clerks of the judicial courts; c. 104, § 4, re reporter of decisions to furnish advance sheets; c. 106, § 1, re constitution of superior court; c. 106, § 6, re judicial notice of superior court rules; c. 106, § 7, re conferences of justices; note to c. 107, § 1, re the nature of the writs authorized under this section; c. 182, § 7.

I. GENERAL CONSIDERATION.

Court has jurisdiction only of matter legally before it. — From the provisions of this section the court derives authority to exercise jurisdiction in civil and criminal matters only when they are brought legally before it. And it is manifest, that in ascertaining whether legally brought before it or not, reference must be had to the common law of the state. Ex parte Davis, 41 Me. 38.

And writs without seal or signature confer no judisdiction.—An instrument without seal or signature, though purporting to be a writ is absolutely invalid under this section, and confers no jurisdiction upon the court in which it is entered, and consequently, presents no process to the court in which it can predicate an amendment or any other action, except to dismiss it from the files of the court as a document improperly entered thereon. Pinkham v. Jennings, 123 Me. 343, 122 A. 873.

Nor does a mere memorial.—The court, under this section, has no jurisdiction in the case of a mere memorial, alleging that the acts of co-ordinate branches of the government are irregular, unlawful and unconstitutional, and praying the judgment of the court thereupon, especially when no process connected with the memorial has been served upon anyone adversely interested or otherwise, and no department of the government or officer thereof has appeared voluntarily and claimed to be heard. Ex parte Davis, 41 Me. 38.

Validity of legislative acts decided from knowledge of public matters under statutory and common law.—Whether an act of the legislature was constitutionally passed

is a judicial question, within the jurisdiction of the court under this section, to be decided by the bench from an understanding of public matters, regardless of plea or proof, and according to the rules of the common law in the absence of statutory rules. Weeks v. Smith, 81 Me. 538, 18 A. 325.

The supreme judicial court is clothed with the most plenary power to maintain order and decorum while in session. For this purpose it may employ such subordinate ministerial and executive officers as may be deemed necessary. Such officers, when thus employed, are the immediate ministers and servants of the court. Baker v. Johnson, 41 Me. 15.

The court has the inherent right to establish rules for the orderly conduct of business before it. When thus established they have the force of law, and are binding upon the court, as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case. Fox v. Conway Fire Ins. Co., 53 Me. 107.

For cases relating to a former provision of this section expressly conferring authority upon the court to make rules respecting modes of trial, see Maberry v. Morse, 43 Me. 176; Cunningham v. Long, 125 Me. 494, 135 A. 198.

Meaning of criminal contempts.—Criminal contempts, within the meaning of this section, are those committed in the immediate view and presence of the court, such as insulting language, or acts of violence, which interrupt the regular proceedings in court. This class of contempts may and should be punished summarily, after such hearing, at once, as the court may deem just and necessary. Androscoggin & Kennebec R. R. v. Androscoggin R. R., 49 Me. 392.

Meaning of civil contempts.—There is a class of contempts, under this section, which are in a sense constructive, and arise from matters not transpiring in court, but in reference to failures to comply with the orders and decrees issued by the court to be performed elsewhere. But the process to bring parties committing civil contempt into court is less summary than that in case of a criminal contempt before the court. Androscoggin & Kennebec R. R. v. Androscoggin R. R., 49 Me. 392.

In matters of contempt under this section, exceptions may be taken on the question of jurisdiction, where it is distinctly raised and adjudicated upon as matter of law. Androscoggin & Kennebec R. R. v. Androscoggin R. R., 49 Me. 392.

Applied in Norris v. McKenney, 111 Me. 33, 87 A. 689.

Quoted in concurring opinion to Smith v. Larrabee, 58 Me. 361.

II. SUPERINTENDENCE AND WRITS.

Powers within the superintendence provision.—Whether the inferior court is legally constituted; whether the allegations made to it are sufficient in form and substance to authorize it to proceed; whether its procedure is correct, and whether its sentence is lawful are questions for this court to determine under this section. If abuse or error is found in any of these matters, this court can by proper process annul the whole proceeding, where no other mode of correction is provided. Andrews v. King, 77 Me. 224.

Including cognizance of questions of law in judicial proceedings of municipal officers.—The provision under this section for general superintendence of all inferior courts gives jurisdiction broad enough to include a superintendence of the mayor and aldermen where they are sitting in any judicial capacity, as in cases of removal of public officers. It does not extend to a retrial of the facts, nor to a review of the evidence, nor to a revision of any matter of discretion. It does extend to an examination of the grounds of the proceedings, and of the course of the procedure, to determine whether the inferior court kept within its jurisdiction, and proceeded according to law. Andrews v. King, 77 Me. 224.

As where they determine damages in eminent domain proceedings. — Where a board of county commissioners acts judicially under a legislative act authorizing them to determine damages for land taken by eminent domain, such board is a court; and the supreme judicial court, under this section, has jurisdiction on petition to correct the errors of the board. See Waukeag Ferry Ass'n v. Arey, 128 Me. 108, 146 A. 10.

And no intendment can be indulged by the court as to the jurisdiction and regularity of the procedure of municipal bodies acting in judicial capacities in adversary proceedings. Andrews v. King, 77 Me. 224.

Court may require recalcitrant tribunal to certify facts and rulings together with record.—If an inferior respondent tribunal does not appear and file its answer, upon a petition for certiorari under this section, so that the case may be decided upon its merits; or willfully refuses to make a full state-

ment of facts and rulings; the court having full power to correct "abuses" as well as "errors," under this section, may require such statement to be certified together with the record. Levant v. Penobscot County Com'rs, 67 Me. 429.

And it may compel county commissioners to perform statutory duties.—The plenary power of this court, under this section, over the proceedings of all inferior courts, by appropriate process, clearly authorizes the supreme judicial court, by the writ of mandamus, to compel county commissioners to perform the duties imposed upon them by statute. State v. Wellman, 83 Me. 282, 22 A. 170.

Where county commissioners refuse to carry into effect a judgment of the supreme judicial court, refusing to lay out and establish a highway, the court under this section may issue a writ of mandamus on petition by the injured party. And where they not only refuse to carry into effect such judgment, but proceed to act contrary to the judgment of the supreme judicial court, a writ of prohibition will be issued by the court, enjoining such proceedings. Harriman v. Waldo County Com'rs, 53 Me. 83.

Writ of prohibition is authorized.—The power of the supreme judicial court of this state to issue the writ of prohibition is conferred by this section, although the court had the power, by virtue of its general common law jurisdiction, it being a common law writ. Norton v. Emery 108 Me. 472, 81 A. 671.

As is mandamus.—The supreme judicial court has power to issue writs of mandamus when it may be necessary for the furtherance of justice, and the due execution of the laws. Smyth v. Titcomb, 31 Me. 272.

Under rules of common law.—The writ of mandamus is authorized by this section; but, as it does not provide in what behalf the remedy may be had, the rules of the common law apply. Weeks v. Smith, 81 Me. 538, 18 A. 325.

And certiorari. — The court, under this section, has the power to issue the writ of certiorari in the furtherance of justice. Andrews v. King, 77 Me. 224.

The writ of certiorari is the usual and suitable remedy to annul the proceedings of the inferior court, if found to be erroneous. Andrews v. King, 77 Me. 224.

To attack the jurisdiction of county commissioners. — When the county commissioners have rendered a judgment in a matter over which they have no jurisdiction, the supreme judicial court will nonetheless grant the writ of certiorari, even though no injustice has been done, the wrong in such case consisting in the assumption and exercise of an authority not granted. Whatever and however great the jurisdictional defects apparent of record, they may all be taken advantage of by this process and by this alone. White v. Lincoln County Com'rs, 70 Me. 317.

Or to correct certain irregularities.—If there are important irregularities in the location of a road or in the assessment of taxes to build it, they can be taken advantage of, under this section, only by certiorari. White v. Lincoln County Com'rs, 70 Me. 317.

Sec. 8. Facsimile signature of clerk.—A facsimile of the signature of the clerk of the supreme judicial court imprinted by or at his direction upon any writ, summons, subpoena, order or notice or order of attachment, except executions and criminal process, shall have the same validity as his written signature. (1947, c. 46, § 1.)

Law Court.

Sec. 9. Constitution of law court; concurrence required.—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. (R. S. c. 91, § 8.)

Applied in Sawyer v. Skowhegan, 57 Me. 500; Hall v. Unity, 57 Me. 529.

Cited in Baker v. Johnson, 41 Me. 15.

Sec. 10. Justice not to sit in review of causes tried before him.—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. (R. S. c. 91, § 9.)

Sec. 11. Sessions.—For the purpose of the law court the state shall constitute one 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. (R. S. c. 91, § 10.)

Sec. 12. All pending cases marked "law" certified to clerk; how entered and determined.—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. (R. S. c. 91, § 11.)

Applied in Stowell v. Hooper, 121 Me. 152, 116 A. 256.

Quoted in State v. Edminister, 101 Me. 332, 64 A. 611.

Sec. 13. Clerks of terms of law court; duties; compensation; expenses of county.—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. (R. S. c. 91, § 12.)

Sec. 14. Messenger in Cumberland county. — 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. (R. S. c. 91, § 13.)

Sec. 15. Jurisdiction of law court; disposition of cases; technical errors in pleading and procedure.—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 statement 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. (R. S. c. 91, § 14.)

I. Jurisdiction and General Consideration.

II. "Cases" and Cases Marked "Law."

III. Cases "before the Court."
- A. On Exceptions.
- B. On Motions for New Trial.
- C. On "Reports of Cases."

IV. Remanding for Correction of Errors.

I. JURISDICTION AND GENERAL CONSIDERATION.

Legislature has authority to prescribe how review may be had.—While this section grants the right to defeated litigants to bring their grievances to the law court for review, that is not a constitutional, nor even a common-law right. The legislature has authority to repeal the statute, and withhold the right of appeal, motion, or exceptions, and compel suitors to be content with results reached in the trial courts. Or the right may be granted subject to such restrictions, limitations and conditions as the legislature may annex. These fundamental principles apply to declaratory judgments. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Law court is one of limited jurisdiction.—The law court is not a constitutional court under this section. It is not a court of original or of common law jurisdiction. The court is created by statute, and has that jurisdiction only which the statute has conferred upon it, and that is a limited jurisdiction. It has no other authority. The state has the right in creating the law court, to limit its powers and to determine upon what conditions they shall be exercised. Morin v. Chaflin, 100 Me. 271, 61 A. 782; Mather v. Cunningham, 106 Me. 115, 75 A. 323; Cole v. Cole, 112 Me. 315, 92 A. 174; Nissen v. Flaherty, 117 Me. 534, 105 A. 127; Elliot v. Sherman, 147 Me. 317, 87 A. (2d) 504.

The law court is a statutory court whose jurisdiction is limited and defined in this section, the provisions of which have not been materially changed since 1857. In re Holbrook, 133 Me. 276, 177 A. 418.

And not one of original jurisdiction.—The supreme court, while sitting in the several districts for the purpose of hearing and determining questions of law and equity, is not, under this section, a court of original jurisdiction. Baker v. Johnson, 41 Me. 15.

The court cannot properly exceed its statutory powers, nor dispense with the conditions imposed. Morin v. Chaflin, 100 Me. 271, 61 A. 782; Elliot v. Sherman, 147 Me. 317, 87 A. (2d) 504.

The law court is a court of review and not of original jurisdiction. It cannot extend its statutory powers, for the incongruity of invoking original jurisdiction by appeal is apparent. Mather v. Cunningham, 106 Me. 115, 75 A. 323; Edwards, Appellant, 141 Me. 219, 41 A. (2d) 825.

It has no supervisory jurisriction.—The supreme judicial court sitting as a law court does not have supervisory jurisdiction over inferior courts under this section. That is vested in the supreme judicial court sitting at nisi prius. Nor can the supreme judicial court sitting as a law court extend its statutory powers. Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809. See Edwards, Appellant, 141 Me. 219, 41 A. (2d) 825.

And is not a court for trials.—Under the present organization of the judiciary the

law court, within the meaning of this section, is not a court for trials and has such and only such jurisdiction as is conferred upon it by statute. State v. Gilman, 70 Me. 329.

Nor can it pass sentence. — Under this section the law court has no authority to pass sentence, and of course cannot render final judgment. This can be done only in the court in which the trial is had. State v. Gilman, 70 Me. 329.

It can hear only authorized matters brought up by statutory procedure.—The supreme judicial court sitting as a law court can hear and determine, within the meaning of this section, only those matters authorized by this section and brought to it through the statutory course of procedure. Simpson v. Simpson, 119 Me. 14, 109 A. 254; Edwards, Appellant, 141 Me. 219, 41 A. (2d) 825; Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809; Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

And case improperly before the court should be remanded.—A case having only a question of fact to decide is not properly before the law court on report. The triers of the facts who can see and hear the witnesses should decide this, not a court of law which has before it nothing but the printed record. Such a case should be remanded. Associated Fish Products Co. v. Hussey, 145 Me. 388, 71 A. (2d) 519.

For statutory limitations are jurisdictional. — Only cases in which a statutory right of review before this court is granted can be heard and determined by the court under this section, and then only when brought to the court by the course of procedure, or method, authorized by a general or specific statute applicable to the particular cause of action and the nature of the question presented for review. These requirements are jurisdictional, and the law court has no jurisdiction to consider a case upon "appeal" or "motion" which should be presented to it by "bill of exceptions." Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

And cannot be waived. — The law court can hear and determine, under this section, only those matters authorized by statute and brought to it through the statutory course of procedure. Both of these limitations on the power of the court are jurisdictional and neither of them can be waived. Bodwell-Leighton Co. v. Coffin & Wimple, 144 Me. 367, 69 A. (2d) 567.

Nor can consent confer jurisdiction.— Jurisdiction over a cause not legally before the law court does not exist and cannot be conferred by consent of the parties. Edwards, Appellant, 141 Me. 219, 41 A. (2d) 825; Bodwell-Leighton Co. v. Coffin & Wimple, 144 Me. 367, 69 A. (2d) 567.

As where wrong form of review chosen. —When the remedy to obtain review is by bill of exceptions, and an appeal is erroneously taken, consent cannot confer jurisdiction under this section. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Nor is there jurisdiction where party cannot produce report.—When by reason of the death of an official court stenographer, a party who has filed a motion for a new trial at law, or has taken an appeal in equity is unable to procure a report of the evidence, then that party has not complied with the statutory conditions, and the law court has no jurisdiction under this section to remand the case for a new trial; it must overrule the motion, or dismiss the appeal, for want of prosecution. Morin v. Claflin, 100 Me. 271, 61 A. 782. See c. 113, § 191 re petition to set aside verdict in case of death or disability of reporter.

Or otherwise comply with statutory conditions.—When the parties have complied with the statutory conditions prescribing how cases shall be brought to the law court, then the law court under this section has jurisdiction; it has no jurisdiction otherwise. Morin v. Claflin, 100 Me. 271, 61 A. 782.

Review by exceptions, motion, or appeal depending on nature of cause and question involved.—Under this section there are three distinct statutory methods for obtaining a review of cases by the law court, motion, exceptions and appeal. These various methods of obtaining a review by this court are not interchangeable and equally applicable to all cases. The method to be used depends not only upon the nature of the cause in which, but also upon the nature of the question of which, the review is sought. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

But a case should proceed to a decree upon the merits before the sitting justice and then be appealed, or reported on both law and fact. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

Court cannot decide interlocutory questions except upon stipulation.—The law court under this section cannot be required and indeed has no jurisdiction to decide, prematurely, interlocutory questions which the subsequent proceedings in the case may show to be wholly immaterial, unless the parties stipulate that the decision may, in one alternative at least, supersede fur-

ther proceedings. Fidelity & Casualty Co. v. Bodwell Granite Co., 102 Me. 148, 66 A. 314; Cheney v. Richards, 130 Me. 288, 155 A. 642; Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

A case cannot be sent to the law court piecemeal, one question at a time, the case to be returned again to the law court when and as often as another question may arise. Fidelity & Casualty Co. v. Bodwell Granite Co., 102 Me. 148, 66 A. 314.

And it will not entertain mere speculative case.—The court, under this section, will not entertain a case for the purpose of deciding questions, which so far as the parties are concerned, are merely speculative, as, for instance, a habeas corpus proceeding where the prisoner has already secured his liberty by taking the poor debtor's oath. Fish v. Baker, 74 Me. 107.

Nor grant amendments.—The supreme court, while sitting as a court of law, under this section, is not a court of original jurisdiction, and cannot grant leave to amend. Mather v. Cunningham, 106 Me. 115, 75 A. 323; Elliot v. Sherman, 147 Me. 317, 87 A. (2d) 504.

For they are permitted only at nisi prius.—The law court cannot entertain a motion for an amendment. Amendments can be permitted only at the nisi prius terms, after which the law court can determine nothing but the issue presented. Crocker v. Craig, 46 Me. 327.

Up to final hearing before law court.—A mere report of the evidence given at the trial, and reported upon a motion to set aside the verdict as against evidence, may be amended at any time before the case comes on for a final hearing before the court under this section, if it is made to appear, to the satisfaction of the judge presiding at the trial, that truth requires that it should be amended. Treat v. Union Ins. Co., 56 Me. 231.

Where the opinion of the law court is silent upon the question of costs, no costs are allowed to either party. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

Former provision of section.—For a case concerning a former provision of this section providing for jurisdiction over "all questions of law arising on reports of evidence," see, Palmer v. Pinkham, 37 Me. 252.

History of section.—See Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Applied in Hewett v. Adams, 50 Me. 271; Shepley v. Atlantic & St. Lawrence R. R., 57 Me. 22; Sawyer v. Skowhegan, 57 Me. 500; Spaulding v. Farwell, 62 Me. 319; White v. Lincoln County Com'rs, 70 Me. 317; Andrews v. King, 77 Me. 224; Grant v. American Ry. Express Co., 126 Me. 489, 139 A. 784; Donnell v. Board of Registration of Medicine, 128 Me. 523, 149 A. 153; Bar Harbor & Union River Power Co. v. Foundation Co., 129 Me. 81, 149 A. 801; Burkett v. Youngs, 135 Me. 459, 199 A. 619; Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429; People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632; Franklin Paint Co. v. Flaherty, 139 Me. 330, 29 A. (2d) 651; State v. Morton, 142 Me. 254, 49 A. (2d) 907; Powers v. Rosenbloom, 143 Me. 408, 59 A. (2d) 844; Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128; Baxter v. Waterville Sewerage District, 146 Me. 211, 79 A. (2d) 585; Berger v. State, 147 Me. 111, 83 A. (2d) 571; Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Quoted in State v. Dresser, 54 Me. 569.

Stated in State v. Hines, 68 Me. 202.

Cited in State v. Elden, 41 Me. 165; Nye v. Spencer, 41 Me. 272; Mitchell v. Emmons, 104 Me. 76, 71 A. 321; Gilbert v. Cushman, 113 Me. 525, 95 A. 201; Jordan v. Mace, 144 Me. 351, 69 A. (2d) 670.

II. "CASES" AND CASES MARKED "LAW."

Meaning of "case."—A case is a contested question before a court of justice; a suit or action, a cause. It imports a state of facts which furnishes an occasion for the exercise of the jurisdiction of a court of justice. In this, its generic sense, the word includes all cases, special or otherwise. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

The word "case" is used in this section in its unrestricted sense. Mather v. Cunningham, 107 Me. 242, 78 A. 102; Cheney v. Richards, 130 Me. 288, 155 A. 642.

"Case," as used in this section, is synonymous with cause and means any question, civil or criminal, contested before a court of justice. Cheney v. Richards, 130 Me. 288, 155 A. 642.

A case marked "law" is continued by the express command of this section and no other entry on the docket is required except to mark the case "law." That entry ipso facto operates effectually as a continuance of the action until its determination by the law court. Rockland Savings Bank v. Alden, 104 Me. 416, 72 A. 159; Stowell v. Hooper, 121 Me. 152, 116 A. 256.

And such continuance is absolute and imperative.—The provision of this section requiring the marking of certain cases "law" and continuing the same is self-exe-

cuting and operates as a continuance of actions marked "law" without special order of court, until their determination is certified as therein provided. The continuance is made an absolute and imperative requirement, and the court has no power to prevent a continuance under such circumstances. Rockland Savings Bank v. Alden, 104 Me. 416, 72 A. 159.

Case is not marked "law" upon overruling of dilatory pleas. — This section contemplates trial upon the merits after exceptions are taken to the overruling of dilatory pleas. When such exceptions are taken the case is not marked "law" and continued, but stands upon the docket until it is in such condition that a rescript from the law court may be decisive and final. Stowell v. Hooper, 121 Me. 152, 116 A. 256.

Nor while case remains open for further hearing, motions, or orders.—While a case remains open for further hearing of testimony, or any interlocutory motions, orders or decrees remain undisposed of, such case is not in a condition to be marked "law" on the docket of the county court where it is pending, nor to be entered upon the docket of the law court as provided in this section. Baker v. Johnson, 41 Me. 15.

But an erroneous certification, where it is premature, is not a waiver of the right to plead over. See Stowell v. Hooper, 121 Me. 152, 116 A. 256.

III. CASES "BEFORE THE COURT."

A. On Exceptions.

Review on exceptions is statutory.—The taking and allowance of exceptions and their certification, under this section, to the law court, or to the chief justice thereof, are wholly matters of statutory regulation. But for the statute there would be no right of exception. Cole v. Cole, 112 Me. 315, 92 A. 174.

The right to review by bills of exceptions is now preserved by the express provisions of this section; c. 106, § 14; c. 107, § 26; and c. 113, § 39. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

There are many instances of "bills of exceptions": Exceptions to rulings on matters of evidence, to dismissal of the libel because it does not present a case within the jurisdiction of the court and to a ruling sustaining a demurrer. Simpson v. Simpson, 119 Me. 14, 109 A. 254.

Review on exceptions extends to all rulings of law by single justice.—Under this section the right to bring cases to the law court by bills of exceptions is general, and extends generally to all rulings of law in cases heard by a single justice. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

If the parties do not consent to raise questions of law by a report of the evidence, or by agreed statement of facts, it is the duty of the presiding judge upon trial to make such rulings, orders, or decrees thereon as in his opinion the law of the case requires. To these rulings, orders or decrees, in matters of law, any party who is thereby aggrieved may allege exceptions, which exceptions, when properly authenticated, may, after all preliminary and interlocutory matters have been disposed of, be entered upon the docket of the law court for final determination under this section. Baker v. Johnson, 41 Me. 15.

And rulings on sufficiency of evidence not reviewable.—When a case is tried by the presiding judge without the intervention of a jury, exceptions will not lie to his rulings in relation to the sufficiency of the evidence, and therefore its sufficiency, as a matter of fact, cannot be examined under this section by the law court upon a bill of exceptions. Hazen v. Jones, 68 Me. 343.

Nor is mere denial of review alone by trial judge. — Where all the evidence adduced upon the hearing of the petition for review has been reported, and it does not appear that the trial judge expressed any opinion, or gave any direction or judgment in matter of law, but denied the review, in the exercise of his discretion, upon the facts adduced in evidence, in such case exceptions will not lie for review by the law court. Scruton v. Moulton, 45 Me. 417. See York & Cumberland R. R. v. Clark, 45 Me. 151.

Nor his denial of new trial in criminal case.—The enumeration of the cases which may come before the law court found in this section does not include exceptions to the ruling of the trial judge in denying a motion for new trial in a criminal case. State v. Googins, 115 Me. 373, 98 A. 1032.

But rulings on whether there is any evidence are cognizable.—The sufficiency of the evidence is a matter of fact, but whether there is any evidence in support of an action is a question of law and it is cognizable by the law court on a bill of exceptions. Hazen v. Jones, 68 Me. 343.

Rulings of a single justice cannot be reviewed by motion or appeal in cases at law.—In all cases at law when court is held by a single justice his opinions, directions or judgments may be attacked by exceptions under this section and c. 113, § 39, extending review to hearings held, and

judgments rendered in vacation, but such directions, judgments or opinions may be attacked only for errors in law. They cannot be reviewed on motion; nor, in the absence of a specific statute, such as applies to the denial of a motion for a new trial by the presiding justice in a felony case, can they be reviewed on appeal. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

But rulings and decrees of a single justice in equity may be reviewed either upon exceptions or appeal under this section. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Distinction between review by exceptions and by appeal.—The distinction between the right to a review of a final decision of the court below by the law court on appeal and the right to a review of such decision on exceptions under this section is not merely one of nomenclature and procedure. Not only is the procedure different, but the scope of inquiry by the law court is different. Exceptions reach only errors in law, while a case on appeal is heard de novo and judgment is entered upon the new decision. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Whenever a jury trial is had, there may be a motion or exceptions for the correction of errors, whether of the court or jury. The law court has jurisdiction over such cases, and it matters little in what class of cases the jury trials were had. Carvill v. Carvill, 73 Me. 136.

Either upon exceptions or motion, the law court, under this section, has a revisory power over the proceedings at the jury term, in all proper cases. McKenney v. Alvord, 73 Me. 221.

But exceptions must be allowed or their truth otherwise established before the exceptions will be heard in the law court under this section. Unless and until there is at hand a true bill of exceptions, there is nothing before the court. State v. Johnson, 145 Me. 30, 71 A. (2d) 316.

And the justice who ruled should determine what the bill of exceptions should contain or omit before it is in order for consideration by the law court under this section. Gregoire v. Lesieur, 146 Me. 203, 78 A. (2d) 494.

For he is party to a review.—In this state, in the first instance, a justice whose rulings are challenged by a bill of exceptions is as much a party to it as the litigants themselves. And his status whose rulings are challenged, or the status of some other authority acting in his stead, pursuant to c. 113, § 39, is such that a bill of exceptions not allowed by him, or by such other authority, is not in order for consideration by the law court under this section. Gregoire v. Lesieur, 146 Me. 203, 78 A. (2d) 494.

But exceptions lie for arbitrary action of trial judge or for his failure to act.—The provisions of c. 106, § 14, authorize relief in the law court on exceptions under this section when a party is confronted with arbitrary action, or in a failure to act on the part of the justice making the rulings. Gregoire v. Lesieur, 146 Me. 203, 78 A. (2d) 494.

Bill of exceptions must contain necessary portions of record.—A bill of exceptions brought to the law court under this section must contain, either by reference or otherwise, all necessary portions of the record. The law court cannot travel outside the bill of exceptions and consider documents or evidence not made a part thereof though contained in the printed case. The bill of exceptions must be able to stand alone. State v. Townsend, 145 Me. 384, 71 A. (2d) 517.

It must be specific and able to stand alone.—The bill of exceptions presented to the law court under this section must itself state the grounds of exception in a summary manner. The bill must be able to stand alone, for the court cannot go outside the bill itself to determine that rulings are erroneous and prejudicial, even if the evidence accompanies the bill. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68; Moores v. Springfield, 143 Me. 415, 62 A. (2d) 210.

And if taken in gross will not be considered.—Exceptions brought to the law court under this section must specify the rulings and instructions to which they are designed to apply, and, if taken in gross, will not be considered. Macintosh v. Bartlett, 67 Me. 130.

Exceptions will lie to refusal to discharge on habeas corpus, and such exceptions are reviewable in the law court under this section. In re Holbrook, 133 Me. 276, 177 A. 418.

And to matters of law in divorce cases.—In matters of law as to divorce cases the proper practice is to take the case up by exceptions, even though the objection is to the final ruling granting the divorce. In such case the presiding justice reports the facts as he finds them or in some cases the testimony upon which he grounds his conclusion, and thus is distinctly presented the question, whether as a matter of law he has committed an error. The same practice should follow the signing of the

decree in jury tried cases. Simpson v. Simpson, 119 Me. 14, 109 A. 254; Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809.

Where it is sought to set aside a jury's verdict and secure a new trial in a divorce proceeding, the only remedy is by bill of exceptions, and not by motion. See Simpson v. Simpson, 119 Me. 14, 109 A. 254.

Unless in such cases the exceptions are adjudged frivolous and certified to supreme judicial court.—The law court has no jurisdiction to consider and determine exceptions in a divorce case which were adjudged frivolous and intended for delay, and which were certified by the justice of the superior court to the chief justice of the supreme judicial court, to be argued in writing. The certificate in such case should be discharged, and the exceptions stand to be certified to the clerk of the next term of the law court, under the provisions of § 12. Cole v. Cole, 112 Me. 315, 92 A. 174.

B. On Motions for New Trial.

Litigant may elect law or trial court in cases of motion for new trial.—The legislature did not intend to repeal the provision of this section giving jurisdiction of cases on motions for new trials by enacting c. 113, § 60, giving the trial judge power to set aside a verdict on motion and grant a new trial. Averill v. Rooney, 59 Me. 580.

The clause "cases in which there are motions for new trials upon evidence reported by the judge," refers to civil cases alone, under this section, while the clause "cases, civil or criminal, presenting a question of law," includes criminal cases. State v. Gilman, 70 Me. 329.

It is limited to jury trials.—The jurisdiction conferred upon the law court by this section over "cases in which there are motions for new trials upon evidence reported by the justices," is limited to jury trials and does not include cases submitted to the trial judge for decision without the aid of a jury. Levee v. Mardin, 126 Me. 133, 136 A. 696.

And does not include cases submitted to presiding justice without reservations.—The jurisdiction conferred upon the law court by this section over "cases in which there are motions for new trials upon evidence reported by the justice" does not include cases submitted without reservations to the presiding justice for decision without the aid of a jury. Espeargnette v. Merrill, 107 Me. 304, 78 A. 290.

It does not embrace questions of admission or exclusion of testimony.—The provision for jurisdiction in cases in which there are "motions for new trials upon evidence reported by the justice," was not intended to embrace a contested question respecting the admission or exclusion of testimony. Palmer v. Pinkham, 37 Me. 252.

Nor motions on grounds of incompetence of juror.—A motion for a new trial after verdict on the ground of incompetence of a juror is not provided for by statute, and must depend upon the principles of the common law and can therefore be heard only in the court where it was tried; it may not be taken to the law court. State v. Gilman, 70 Me. 329.

But does comprehend decisions against evidence and questions of weight of evidence.—The question of whether a decision was against the evidence or the weight of evidence may be brought to the law court on motion for a new trial, "upon evidence reported by the justice." Jackson v. Jones, 38 Me. 185.

The law court may properly consider and determine motions to set aside as against law and evidence verdicts of juries rendered in probate cases upon issues framed at nisi prius, when reported by the presiding justice under this section with all the evidence adduced at the trial. McKenney v. Alvord, 73 Me. 221.

The law court has no jurisdiction to entertain or pass upon the merits of the motion for a new trial. There is neither express nor implied statutory authorization for its use. Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809.

Nor to set aside divorce decrees on motions.—The supreme judicial court sitting as a law court has no jurisdiction under this section to entertain and pass upon motions to set aside divorce decrees and grant new trials in divorce cases. Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809.

Since errors in granting or denying divorce are not reached by motion.—The action of the presiding justice in granting or denying a divorce can be attacked in the law court only for errors in law, and such errors are not reached by motions. Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809.

But motion for new trial before decree by supreme court of probate will be considered.—Where an appellate files a motion for new trial addressed to the law court, without any decree having been made by the supreme court of probate, the motion will not be dismissed without considering the merits of the case, in view of the fact that such a practice has been of long standing; but as a matter of strict statutory construction, it may well be

doubted whether this course of procedure is correct within the meaning of this section. Thompson, Appellant, 118 Me. 114, 106 A. 526.

Justice may include copy of lost document in "evidence reported." — Where an original document has been lost, it is clearly within the power of the justice in making up the "evidence reported by the justice," as provided in this section, to permit a copy of such lost document to be substituted, to the end that justice and truth may prevail and at the same time the legal rights of all parties be carefully preserved. Clark v. Stetson, 113 Me. 276, 93 A. 741.

C. On "Reports of Cases."

"Reports of cases" used in broadest sense to include both law and fact.—The phrase "reports of cases" was employed by the legislature in this section as a method of submitting questions, involving both law and fact, in the most comprehensive manner to the decision of the court. The words are used in their generic or broadest sense and embrace every question of law and fact which the case reported involves. The language of the section must therefore be held to require a submission of the whole controversy to the law court. It consequently becomes immaterial whether the case is a probate appeal, an equity appeal, an agreed statement of facts, or a civil or criminal case presenting a question of law, if reported without any restrictions as to the questions to be decided. Mather v. Cunningham, 107 Me. 242, 78 A. 102; Cheney v. Richards, 130 Me. 288, 155 A. 642.

In cases reported to the law court, under this section, because of questions of law involved the court also passes upon the facts. Dansky v. Kotimaki, 125 Me 72, 130 A. 871.

And contemplates final decision of whole case.—Concerning the method of reporting a case and the ground upon which the court will consider it, where the report contains a provision that only a part of the case should be decided it is irregular, since reports are intended to take up the whole case for the court to make final decisions. It should not come up by installments. Mather v. Cunningham, 107 Me. 242, 78 A. 102; Cheney v. Richards, 130 Me. 288, 155 A. 642.

The purpose of the report is to eliminate the intervening statutory proceedings in probate appeals, and to pass up directly to the law court the whole controversy for final decision. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

Conclusive of all questions of law and fact including costs.—Where the parties by agreement report the whole case without restrictions or qualifications, every question of law and fact that can possibly arise, from the evidence and agreed statements reported, are fully before the court. It is therefore the duty of the court to decide the whole case or dismiss the report without deciding any of it. The certificate of decision by the law court in such case must be regarded as final and conclusive of all questions of law and fact including the question of costs. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

Unless some question reserved.—The report of the case under this section must submit the whole controversy for final decision unless some question is reserved. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

But interlocutory matters entertained if in at least one alternative, case may be disposed of. — Interlocutory motions and other interlocutory matters should not be sent, under this section, to the law court even upon report at the request of the parties, except at such stage of the case, or upon such stipulation, that a decision of the question may, in one alternative at least, dispose of the case itself. Fidelity & Casualty Co. v. Bodwell Granite Co., 102 Me. 148, 66 A. 314; Mather v. Cunningham, 107 Me. 242, 78 A. 102.

Any case, civil or criminal, arising in law or equity or in the probate courts, may be reported under this section. Cheney v. Richards, 130 Me. 288, 155 A. 642.

This section confers jurisdiction upon the law court to hear and determine all questions arising in equity cases. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

And in equity appeals to the law court the case is heard anew upon the record, but the findings of fact by the justice below will be conclusive unless clearly wrong. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

But law case cannot be reviewed by appeal.—Where a right can be enforced only by an action at law, a judgment therein cannot be reviewed by an appeal to the law court under this section, and accordingly a declaratory judgment declaring the same cannot be reviewed by appeal. Such a case should be brought to this court upon a bill of exceptions, not by an appeal. The appeal being unauthorized the law court has no jurisdiction to hear and con-

sider it. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

And there is no general right of appeal to law court.—This section does not confer upon litigants a general right of appeal to the law court; nor is there any statute which confers upon the law court jurisdiction to hear and determine appeals in general, from which it might even be argued that the existence of a general right of appeal is inferentially granted to suitors in all cases. The right of appeal to the law court exists only in cases where it is specifically conferred by statute. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Determination of questions of fact incidental to jurisdiction over questions of law.—In cases reported to the law court on the evidence because of questions of law involved, the court may also pass upon the facts. This power of the court to pass upon the facts of a case, however, is incidental to its jurisdiction to pass upon the questions of law properly presented by the report. Unless questions of law of sufficient importance or doubt to justify reporting the case to the law court are presented, the court ordinarily will not assume to pass upon controverted questions of fact. However, in exceptional cases, the court has sometimes regarded it to be its duty to finally dispose of litigation without compelling the parties to incur further expense and has finally disposed of a case reported to it when no controverted questions of law were presented. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

The law court sits as a court of law. It is the exception, not the rule, when the court sitting as the law court passes upon and determines questions of fact. The unrestrained power of justices at nisi prius, either with the consent or at the request of the parties, to report cases to the law court for determination is inconsistent with the purposes for which the court was established and the duties and powers with which it has been invested by statute. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

And questions of law must be of sufficient importance to justify reporting.—Even as the requirement that the parties agree to a report of a case at law is implied, in like manner, it is also implied that the questions of law involved must be of sufficient importance or doubt to justify reporting the same. Otherwise, any case could be reported to the law court for decision, because the decision of every case involves a question of law and its application to the existing facts. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

The authority of the supreme judicial court to determine cases at law on report is conferred by this section and is confined to cases presenting "questions of law." It is to be noted that this section does not specifically set forth the limitations contained in c. 107, § 24, relative to reporting a cause in equity, to wit, that the same must in the opinion of the presiding justice involve questions of law of sufficient importance or doubt to justify reporting the same or that the parties must agree to the report. However, it has been the almost universal practice to include a declaration to that effect in certificates reporting cases at law. While such a declaration in a certificate reporting a case at law is not strictly necessary, such a case should not be reported to this court, even when the parties request that it be done, except under those conditions. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

It is not competent for a judge presiding at nisi prius to order the evidence to be reported or the parties to agree upon a statement of facts. Baker v. Johnson, 41 Me. 15.

And an action at law cannot be reported unless the parties agree thereto. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

The law court is not authorized to entertain any question of law not arising out of the facts proved and reported. Morris v. Day, 37 Me. 386.

Nor can it entertain petitions to determine validity of elections.—Petitions under c. 5, § 84, to determine the validity of elections cannot properly be reported to the law court for decision under this section. They are to be heard and determined by a single justice, from whose decision an appeal lies to all the justices, as such, and not to the law court. Howard v. Harrington, 114 Me. 443, 96 A. 769.

Motion to plead anew does not raise question for law court.—The motion for leave to plead anew, after a demurrer to the defendant's plea in bar is sustained, is addressed to the discretion of the court; it is not a matter of legal right, and does not raise a question of law to go to the law court, as matter of course under this section. Mayberry v. Brackett, 72 Me. 102.

And the law court never assumes to pass upon abstract, or moot, questions of law under this section. It is only when the "question of law" is calculated to settle some controversy that the court entertains it. Mather v. Cunningham, 107 Me. 242, 78 A. 102.

In a case "on report" the plaintiff has the

burden of proof. Wilde v. Madison, 145 Me. 83, 72 A. (2d) 635.

IV. REMANDING FOR CORRECTION OF ERRORS.

Court may remand for correction of errors.—When errors in pleading or procedure render it impossible to pass upon the issues intended to be raised by a bill of exceptions, and the ends of justice require such action, this court has authority under this section to order a remand for the correction of such errors. Adair v. Keeper of Jail, 146 Me. 80, 77 A. (2d) 583.

Only when "the ends of justice require."—It is only when, in the opinion of the law court, "the ends of justice require" that it may remand the case to the court below for the correction of errors of procedure. And when the ends of justice do not so require the case cannot be remanded. Randall v. Pinkham, 149 Me. 320, 100 A. (2d) 660.

As to incorporate parts of the record.—For failure to incorporate necessary parts of the record in the bill of exceptions, the law court may return the bill of exceptions for correction under the provisions of this section. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925; Moores v. Springfield, 143 Me. 415, 66 A. (2d) 210; Adair v. Keeper of Jail, 146 Me. 80, 77 A. (2d) 583.

This section authorizes the law court to remand where an amendment is necessary to correct the bill of exceptions by making the objections to the referees' report a part of the bill of exceptions. Dubie v. Branz, 145 Me. 389, 72 A. (2d) 450.

But no bill of exceptions can be remanded for the correction of errors unless it was allowed in some proper manner. Gergoire v. Lesieur, 146 Me. 203, 78 A. (2d) 494.

For court otherwise has no jurisdiction.—The first sentence of paragraph two of this section was not intended to confer, nor does it confer, jurisdiction upon the law court in cases over which it has no jurisdiction. A case presented to the law court over which it has no jurisdiction is not "before the law court." Carroll v. Carroll, 144 Me. 171, 66 A. (2d) 809.

Sec. 16. Arguments in writing.—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. (R. S. c. 91, § 15.)

Applied in Bangor v. Beal, 85 Me. 129, 26 A. 1112; Hamlin v. Mansfield, 88 Me. 131, 33 A. 788; Welch v. State, 120 Me. 294, 113 A. 737; Marks v. Outlet Clothing Co., 122 Me. 406, 120 A. 427; Parker v. W. E. Soule Co., 123 Me. 524, 124 A. 321; Davis v. Cass, 127 Me. 167, 142 A. 377.

Sec. 17. Complaint for not entering cases on law docket. — When cases mentioned in section 15 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. (R. S. c. 91, § 16.)

Applied in Farrin v. Kennebec & Portland R. R., 36 Me. 34.

Sec. 18. Entry of judgment; attachments and rights to disclose preserved; proceedings on death of party.—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. (R. S. c. 91, § 17.)

Cross references. — See c. 113, § 57, re executor, etc., may appear; c. 165, §§ 7, 13, re proceedings when party to an action dies.

Upon determination of law court, automatic judgment as of next preceding term entered.—When the determination of the law court has been certified to the clerk, it is his duty, under this section, except in a few instances provided for by statute, to enter judgment. The sentence, which may be, though not necessarily, a part of the final judgment is not certified, but all other matters pending are. It only remains to pass the sentence, and the case can be continued for no other purpose. State v. Hines, 68 Me. 202.

When an order from the law court is received by a clerk of court, overruling exceptions taken to an order directing judgment to be entered upon a report of referees, he should enter judgment as of the next preceding term, in accordance with this section even though the defendant had been summoned as trustee of the plaintiff in a suit then pending against the plaintiff, if there is no subsisting order to the contrary. Huntress v. Hurd, 72 Me. 450.

And the case cannot be recalled.—There is no provision by statute or rule for a rehearing by the law court after a decision rendered. Indeed, there can be no rehearing in cases where motions and exceptions are overruled, for, under this section, such cases, after decision, go automatically to judgment as of the preceding nisi prius term, and it is beyond the power of the court to recall them. Booth Bros. v. Smith, 115 Me. 89, 97 A. 826.

Even though costs were not provided for. — Where a case has already gone to judgment after decision by the law court, neither this section nor any statute or rule of law authorizes the law court to recall judgment and reinstate it upon the docket of the law court, although the decision made no mention of costs in the case. Mather v. Cunningham, 106 Me. 115, 75 A. 323.

Death cannot be suggested on the docket in vacation.—When a party to a suit dies while it is pending before the law court, and the death has not been suggested on the docket at the time of the receipt of the certificate from the law court, it cannot be made in vacation by authority of this section; the only course authorized is an application to a justice of the court to have it carried forward to a subsequent term, that it might then be made and an opportunity given to the legal representative to come in voluntarily and thus save the expense of a citation. Segars v. Segars, 76 Me. 96.

Applied in Davis v. Smith, 79 Me. 351, 10 A. 55; Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667; Bisbee v. Mt. Battie Mfg., 107 Me. 185, 77 A. 778.

Quoted in Rockland Savings Bank v. Alden, 104 Me. 416, 72 A. 159.

Sec. 19. Attachments continue in certain cases on death of plaintiff; when defendant has been arrested.—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. (R. S. c. 91, § 18.)

Sec. 20. Copies in law cases printed or written.—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. (R. S. c. 91, § 19.)

See c. 105, § 19, re removal of unworthy attorneys; appeal.