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Chapter 105.

Board of Bar Examiners. Attorneys at Law.

Admission to Practice Law.

Sec. 1. Board for examination of applicants; tenure; compensation; meetings.—The board of examiners for the examination of applicants for admission to the bar, as heretofore established and hereinafter in this chapter called the "board," shall be composed of 5 competent lawyers of the state; 1 member of said board shall be appointed annually by the governor on the recommendation of the chief justice of the supreme judicial court and shall hold office for the term of 5 years beginning on the 1st day of September of each year. Vacancies occurring from death, resignation, removal or inability to act shall be filled in like manner for the unexpired term. Such board shall hold at least 2 sessions annually at such times and places in the state as the supreme judicial court shall direct, for the purpose of examining all applicants for admission to the bar, as to their legal learning and general qualifications to practice in the several courts of the state as attorneys and counselors at law and solicitors and counselors in chancery and, upon such examination being had, the board shall issue to such applicants as shall pass the required examination a certificate of qualification stating the standing of the applicants and recommending their admission to the bar. The members of the board shall elect from their number a secretary and shall make such rules and regulations relative to said examination as to them may seem proper. The president of said board shall be the member whose term of office soonest expires. Three members of said board shall constitute a quorum for the transaction of business.

The secretary of the board shall be the treasurer thereof and shall receive all fees, charges and assessments payable to the board and account for and pay over the same according to law.

The members of the board shall each receive as compensation for their services $10 a day for the time actually spent and their necessary expenses incurred in the discharge of their duties, to be certified by the secretary of the board. (R. S. c. 93, § 1.)

Cross references.—See c. 16, §§ 2-4, re bond of state officials; c. 18, § 31, re fees, fund for payment of expenses of board, etc.

Examinations held at Bangor or Orono and at Portland.—Pursuant to the provisions of this section the supreme judicial court has ordered that the board of examiners for the examination of applicants for admission to the bar hold sessions at Bangor or Orono in the County of Penobscot on the first Wednesday of February in each year and at Portland on the first Wednesday of August in each year, for the purpose of examining all applicants for admission to the bar, as to their legal learning and general qualifications to practice in the several courts of the state as attorneys and counselors at law and solicitors and counselors in chancery. See Order of Supreme Judicial Court, 148 Me. 431.

Sec. 2. Outside attorneys to practice after 6 months residence; fee.—Practicing attorneys, residents of other states and territories or from foreign countries, may be admitted on motion to try cases in any of the courts of this state by such courts, but shall not be admitted to the general practice of law in this state without complying with the provisions of the following section; provided that where any applicant, who has been a member of the bar of another state or the District of Columbia in good standing and in active practice for at least 3 years and has been a bona fide resident of this state for the 6 months last past, shall fur-

nish the supreme judicial court a certificate of admission to practice in the court of last resort of such state or a certificate of admission to any district court of the United States, together with the recommendation of one of the judges of the court of last resort of such state or of the District of Columbia, and also a certificate of good moral character and of fitness to practice law from the board, said supreme judicial court may in its discretion, if satisfied as to his qualifications, admit such person to practice on motion made by some member of the bar of said court.

Any such applicant, when making application for such certificate of good moral character and of fitness to practice law, shall pay to the board a fee of $100, all or any part of which may be used by said board to defray the expense of investigation of such applicant.

No person shall be admitted as an attorney upon motion, without the certificate of qualification mentioned in section 1 from the board, until he has paid to the treasurer of the county where he is admitted, $20, and produced a receipt therefor to the court. (R. S. c. 93, § 2. 1951, c. 66, § 1.)

Sec. 3. Qualifications necessary to practice law.—Every other person who shall be of full age, a resident of this state and a citizen of the United States and of a good moral character may be admitted to practice as an attorney and counselor at law and solicitor and counselor in chancery in all the courts of record of this state on motion made in open court, but the applicant shall first produce the certificate provided for in this chapter from the board, that he possesses sufficient learning in the law and moral character and ability to enable him to properly practice as an attorney and counselor at law and solicitor and counselor in chancery in the courts of this state. No person shall be entitled to practice as an attorney and counselor at law and solicitor and counselor in chancery in this state until he shall be licensed to do so by said courts. No person shall be denied admission or license to practice as an attorney at law on account of sex. (R. S. c. 93, § 3.)

Order of admission is judgment of attorney's qualification. — The order of an attorney's admission to the bar is the judgment of the court that he possesses the requisite legal qualifications and good moral character to entitle him to practice the profession of an attorney at law. Penobscot Bar v. Kimball, 64 Me. 140.

By which the court commends him to public confidence.—By the admission of a person as an attorney at law the court holds him out to the public as worthy of public confidence and patronage. Penobscot Bar v. Kimball, 64 Me. 140.

Sec. 4. Further qualifications; examination; fee; grade of standing. —Each applicant before taking examination for admission to the bar of this state shall produce to said board satisfactory evidence of good moral character and of having received a preliminary education sufficient to entitle him to admission as a member in good standing of the third year class of Bates College, Bowdoin College, Colby College or the University of Maine, or any other college or university approved by said board, as a candidate for the degree of Bachelor of Arts, Science, Education or Business Administration. Such preliminary education shall be proved by a certificate of the satisfactory completion of 2 years' work as a candidate for such degree at one or more of such colleges or universities or by a certificate of admission as a candidate for such degree to the third year class of any such college or university. Any applicant may register with said board at any time by filing with said board a certificate stating his name, address, age and the date on which the study of law is commenced, and at the same time may submit to the board the proof of preliminary education, which proof shall be at once acted upon by the board and the result of such action communicated to the applicant.

In addition to the foregoing requirements, each applicant shall produce to the said board satisfactory evidence of having pursued the study of law in the office of some attorney or in some law school approved by said board for at least 3 years prior to examination or of having graduated from a law school approved by said board and that he has been a bona fide resident of the state for the 6

months last past. When an applicant shall have satisfied said board that all the foregoing requirements have been fulfilled, said applicant shall pay a fee to be fixed by said board of not more than $35 and shall then be required to submit to a written examination which shall be prepared by said board, also an oral examination by said board, if deemed necessary, and shall be required to answer correctly a minimum of 70% of the questions asked to entitle said applicant to the certificate of qualification mentioned in section 1. The board shall, however, have power to establish such higher grades of standing as to them may seem proper. (R. S. c. 93, § 4. 1947, c. 53. 1951, c. 66, § 2.)

Sec. 5. Equivalent preliminary education.—Any person who has been graduated from a class A secondary school of this state as recognized by the commissioner of education or a secondary school of equal standard located without the state and who has served in the armed forces of the United States during any part of World War II or the Korean Campaign and has been honorably discharged therefrom shall be deemed to have an equivalent preliminary education. Such equivalent preliminary education shall be proved by presenting to said board within 10 years after such person receives his discharge from such armed forces, his diploma or certificate of graduation from such secondary school and his honorable discharge from such armed forces. Any person who so proves in the manner and within the time aforesaid that he has such equivalent preliminary education need not have and need not prove the preliminary education described in section 4 before taking examination for admission to the bar of this state. (1945, c. 70. 1951, c. 157, § 15. 1953, c. 103.)

Sec. 6. Examination papers kept on file; limitation on number of examinations.—The examination papers shall be kept on file in the office of the secretary of the board for a period of 1 year, after which time the same may be destroyed and a record kept of each application, the name of the applicant and his qualifications and general standing as ascertained by such examination, and the secretary of the board shall furnish each applicant with a card showing the proficiency he has attained in each branch or subject upon which he has been examined, whether a certificate of qualification is issued or not. Any applicant failing to pass the first examination may again apply after 6 months by showing to the board that he has diligently pursued the study of the law 6 months prior to the examination and shall pay the same fee for each reexamination as is at that time payable by an original applicant.

Any applicant who fails in 2 examinations shall not be allowed to take any examination within 11 months after his last previous failure. No applicant may take any examination after his fourth failure except by special permission of the board and for good cause shown. A decision of said board refusing such permission may be reviewed by any justice of the supreme judicial court upon petition by the applicant for such review filed with the clerk of the judicial courts in and for the county of Cumberland or the county of Penobscot within 90 days after the giving of written notice in hand or by mail, postage prepaid, by any member of said board to the applicant of the board's decision. The applicant shall cause notice of the time and place of hearing upon such petition for review, together with a copy of such petition, to be served upon the secretary of said board at least 60 days before the date of such hearing. (R. S. c. 93, § 5. 1951, c. 66, §§ 3, 4.)

Sec. 7. Attorney's oath.—Upon admission to the bar, every applicant shall, in open court, take and subscribe an oath to support the constitution of the United States and the constitution of this state, and also take the following oath:

"You solemnly swear that you will do no falsehood nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them that it may be prevented; you will not wittingly or willingly promote or sue any false, groundless or unlawful suit nor give aid or consent to the same; that you will delay no

man for lucre or malice, but will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with all good fidelity, as well as to the courts, as to your clients. So help you God." (R. S. c. 93, § 6.)

Cross reference. — See c. 135, § 18, re corrupt agreements.

An attorney at law is an officer of the court as appears from the terms of his oath of office under this section. Penobscot Bar v. Kimball, 64 Me. 140.

Sec. 8. Persons not admitted forbidden to practice law; cannot recover pay for services.—Unless duly admitted to the bar of this state, no person shall practice law or any branch thereof, or hold himself out to practice law or any branch thereof, within the state or before any court therein, or demand or receive any remuneration for such services rendered in this state. Whoever, not being duly admitted to the bar of this state, shall practice law or any branch thereof, or hold himself out to practice law or any branch thereof, within the state or before any court therein, or demand or receive any remuneration for such services rendered in this state, shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 months, or by both such fine and imprisonment. The word "person" as used herein shall include a body corporate. This section shall not be construed to apply to practice before any federal court by any person duly admitted to practice therein nor to a person pleading or managing his own cause in court. The supreme judicial court and the superior court shall have concurrent jurisdiction in equity, upon petition of 3 or more members of any bar association within the state or of the attorney general, to restrain violations of the provisions of this section. In all proceedings under the provisions of this section, the fact, as shown by the records of the clerk of courts in the county in which a person resides, that such person is not recorded as a member of the bar in such county shall be prima facie evidence that he is not a member of the bar licensed to practice law in the state. The supreme judicial court or any justice thereof, in term time or vacation, shall have the power to issue a rule requiring any person alleged to have violated any of the provisions of this section to appear on a day fixed and show cause why he should not be adjudged in contempt, and abide the order of such court or justice in the premises, which order shall be served by a copy in hand at least 5 days before the return day. In the event that such court or justice finds said person guilty of violating any of the provisions of this section, the person so adjudged shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 months, or by both such fine and imprisonment. This power vesting authority in the supreme court, or any member thereof, to punish for contempt is not to supersede any of the other provisions of this section but is in addition to any other remedy provided herein. (R. S. c. 93, § 7.)

For a case relating to an early form of this section holding that a person may not recover for services rendered as an attorney without specific proof of his qualification as attorney, see Perkins v. McDuffee, 63 Me. 181.

Sec. 9. Simulating legal papers.—No person shall send, deliver, mail or in any manner cause to be sent, delivered or mailed to any person, firm or corporation any paper or document simulating or intended to simulate a summons, complaint, writ or court process of any kind. Any person violating the provisions of this section shall be punished by a fine of not more than $100. (R. S. c. 93, § 8.)

Summary Proceedings for Payment of Collections.

Sec. 10. Summary proceedings against attorney failing to pay money collected.—If an attorney at law receives money or any valuable thing on a claim left with him for collection or settlement and fails to account for and pay over the same to the claimant for 10 days after demand, he is guilty of a breach of duty as an attorney; and such claimant may file in the office of the clerk

of the superior court in the county where such attorney resides, a motion in writing under oath setting forth the facts; and thereupon any justice of the superior court in term time or in vacation shall issue a rule requiring the attorney to appear on a day fixed and show cause why he should not so account and pay, and to abide the order of such justice in the premises; which shall be served by copy in hand at least 5 days before the return day. (R. S. c. 93, § 9.)

Section applies when money collected is in hands of attorney.—While money collected for a client remains in the hands of the attorney, the fiduciary relation continues, and if there is any question, it is resolved by the provisions of this section and §§ 11-14 regarding the payment of money collected. Mayo v. Purington, 113 Me. 452, 94 A. 935.

And section not limited to cases of bad faith.—This section and §§ 11 and 13 do not limit invocation of the summary relief they afford to cases of bad faith, but in terms seem to contemplate their application whenever the client, in full compliance with their requirements brings his claim for money or any valuable thing collected by the attorney in his professional capacity to the court and demands relief. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Justice cannot discharge motion and rule as matter of discretion.—This section and §§ 11 and 13 do not entirely conform to the common law rules applicable to such proceedings. Providing for the filing of a motion in writing under oath by the claimant and for the issuance of a rule to show cause, these sections direct that such a decree as equity requires shall be rendered either on issue joined or on default of appearance and answer. There is no provision for discharge of the motion and rule as a matter of discretion. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

This section is strictly remedial and, while it should not be given a forced construction and extended beyond its obvious import, it must be interpreted so as to effectuate the purpose of its enactment. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

And allegations need not be proved beyond reasonable doubt.—A proceeding under this section is not a quasi criminal complaint and the allegations in the motion by which it is initiated need not be proved beyond a reasonable doubt. A criminal character cannot be attached to it by reason of the authority found in section 13 of the law for the imposition of penalties in case of nonperformance of the decree of the court. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Proceedings give equity and no more.—While this section and § 11 are summary in their procedural requirements insuring prompt and effective action upon claims within their scope, the relief granted is only through such decree as equity requires. That it is intended that the attorney's every right and duty, legal and equitable, shall receive fair consideration and be given the effect that equity and good conscience demand cannot be doubted. The right of the client is no less. They both must do and can receive equity and no more. These two sections are purely remedial. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

"Claim" means demand, right, or supposed right. — In its ordinary and usual sense the term "claim" imports a demand of a right or a supposed right, and the word must be accorded its common meaning. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Sec. 11. Procedure.—If such attorney then appears, he shall file an answer to such motion under oath and such justice may examine the parties and other evidence pertinent thereto. If he does not appear and answer, the facts set forth in the motion shall be taken as confessed; and in either case such justice shall render such decree as equity requires. (R. S. c. 93, § 10.)

Applied in People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Sec. 12. Exceptions.—Either party may allege exceptions to any ruling or decree of such justice; and they shall be allowed unless deemed frivolous. (R. S. c. 93, § 11.)

Applied in People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Sec. 13. Not performing decree, committed for contempt.—If the

attorney does not perform the decree of such justice, he shall be committed for contempt until he does or is otherwise lawfully discharged; and his name shall be struck from the roll of attorneys. (R. S. c. 93, § 12.)

Penalties separate from remedial relief. —The enforcement of the penalties provided in this section must be viewed as independent proceedings separate and distinct from that in which remedial relief is afforded. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

And section only compels performance and penalizes disobedience. — This section is penal. Its provisions do not follow a remedial decree as a matter of course but are effective only to compel performance of the decree and penalize disobedience. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Proceedings being civil need not be proved beyond reasonable doubt. — Proceedings for contempt based upon failure to comply with the orders or decree of court are civil and not criminal, and the requirement of proof beyond a reasonable doubt as in criminal cases does not prevail in civil proceedings. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Sec. 14. Claimant may sue at common law; debtor not to cite to disclose until in jail 90 days.—The claimant may have his suit at common law against such attorney before filing such motion or after an adverse decision thereon; and if judgment is recovered against the attorney in either mode, the fact shall be noted on the margin of the execution issued thereon; and when the debtor is arrested thereon, he shall be committed to jail and no citation to disclose shall be issued until he has been there for 90 days. (R. S. c. 93, § 13.)

Removal of Unworthy Attorneys and Resignation of Attorneys.

Sec. 15. Information filed by attorney general or committee of bar against attorney.—Whenever an information is filed in the office of the clerk of courts in any county by the attorney general, or by a committee of the state bar association, or by a committee of the bar or bar association of such county, charging that an attorney at law has become and is disqualified for the office of attorney and counselor at law, for reasons specified in the information, any justice of the supreme judicial court may, in the name of the state, issue a rule requiring the attorney informed against to appear on a day fixed to show cause why his name should not be struck from the roll of attorneys, which rule, with an attested copy of the information, shall be served upon such attorney in such manner as the justice directs at least 14 days before the return day, and shall be made returnable either in the county where such attorney resides or where it is charged that the misconduct was committed. (R. S. c. 93, § 14.)

Proceedings being civil, proof beyond reasonable doubt not required. — Proceedings for disbarment are civil in character, and the requirement of proof beyond a reasonable doubt as in criminal cases does not prevail in civil proceedings. People's Savings Bank v. Chesley, 138 Me. 353, 26 A. (2d) 632.

Nor are full formal charges required.— The proceedings for the removal of an attorney at law do not partake of the nature of a criminal procedure in which a party has a right to insist upon a full, formal and technical description of the matter with which he is charged. Penobscot Bar v. Kimball, 64 Me. 140.

Sec. 16. Upon denial, information to stand for hearing.—If the attorney on whom such service has been made, on or before said return day files in the office of the clerk of courts in said county of return a denial of the charges specified in the information, the information shall thereupon stand upon the docket for hearing at such time and place as said justice shall order, upon such lawful evidence as may be produced either by the state or by the respondent. (R. S. c. 93, § 15.)

The words "as said justice shall order" do not restrict jurisdiction to the justice who issued the original rule. Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 17. Proceedings in case of default or upon hearing.—If such

attorney fails to file his denial as aforesaid, the facts set forth in the information shall be taken as confessed, and if the justice finds that the facts so confessed are sufficient to disqualify the respondent from holding the office of attorney and counselor at law, or if, in case of denial, the justice upon hearing finds that any of the charges specified are true and that the acts proved are sufficient to disqualify the respondent, as aforesaid, he shall give judgment accordingly, and shall enter a decree that the respondent be removed from the office of attorney and counselor at law in all the courts of the state and that his name be struck from the roll of attorneys. (R. S. c. 93, § 16.)

Attorney may be disbarred for misconduct.—The tenure of an attorney's office is during good behavior, and he can only be deprived of it for misconduct ascertained and determined by the court after opportunity to be heard has been afforded. Penobscot Bar v. Kimball, 64 Me. 140.

Whether within the courts or in private capacity.—It is a mistaken view that an attorney at law can only be disbarred for acts done "in the office of an attorney," or "within the courts," in the terms of his oath of office. On the contrary an attorney may be guilty of disreputable practices and gross immoralities in his private capacity and without the pale of the court, which render him unfit to associate with gentlemen, disqualify him for the faithful discharge of his professional duties in or out of court, and render him unworthy to minister in the forum of justice. Penobscot Bar v. Kimball, 64 Me. 140.

The causes for which an attorney at law may be removed from the bar from the nature of the case are diverse and numerous. He may be removed for violating his official oath; for conviction of perjury or other felony; for attempting to get an opposing attorney drunk in order to obtain advantage of him in the trial of a cause; for obtaining money of his client by false pretences; for advocating the admission in evidence of a forged copy of a letter, knowing it to be forged when offered by his associate counsel; for ceasing to possess "a good moral character"; and for any ill practice attended with fraud and corruption, and committed against the principles of justice and common honesty. Penobscot Bar v. Kimball, 64 Me. 140.

Removal is to safeguard public and administration of law. — The power of removal is given not as a mode of inflicting a punishment for an offense, but in order to enable the courts to prevent the scandal and reproach which would be occasioned to the administration of the law by the continuance in office of those who had violated their oaths or abused their trust, and to take away from such persons the power and opportunity of injuring others by further acts of misconduct and malpractice. Penobscot Bar v. Kimball, 64 Me. 140.

The power of removal is a judicial power to be exercised by a sound judicial discretion, and in accordance with well-established principles of law where the evidence is of a conclusive character. But while its use calls for judicial discretion, it also invokes judicial firmness. Penobscot Bar v. Kimball, 64 Me. 140.

Cited in Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 18. Judgment is final, unless appealed.—The judgment of such justice shall be final unless the respondent within 1 week files his appeal therefrom to the law court by entering his claim therefor upon the docket. (R. S. c. 93, § 17.)

Cited in Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 19. Appeal.—The appeal shall be heard upon printed copies of the case furnished by the respondent at the next law term. If the case is not argued, it shall be decided upon the record, and if the respondent fails to enter his appeal with the printed copies of the case during the first 3 days of said law term, the counsel for the prosecution shall enter the appeal with an attested copy of the judgment and decree, whereupon the same shall be affirmed by the law court. (R. S. c. 93, § 18.)

Cross reference. — See c. 103, § 20, re copies in law cases may be printed or written.

Cited in Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 20. Conduct of prosecution.—The prosecution shall be conducted

by the county attorney for the county where the rule is returnable, unless the justice issuing the rule appoints some other suitable counsel to perform said duty. Compulsory process shall issue to compel the attendance of witnesses, and in case of decree of removal, judgment shall be rendered in behalf of the state against the respondent for full costs to be taxed by the court. (R. S. c. 93, § 19.)

Cited in Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 21. Interpretation of §§ 15-20.—The provisions of the 6 preceding sections do not annul or restrict any authority hitherto possessed or exercised by the courts over attorneys. (R. S. c. 93, § 20.)

Section is in aid of inherent authority of court to discipline and remove attorneys. — The provisions of §§ 15-20 are not exclusive, either as to the procedure therein authorized or in conferring authority upon the supreme judicial court to act in the premises. These provisions are in aid of the authority and power inherent in the court to discipline or remove attorneys at law for misconduct. Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

And does not limit such authority.—The provisions of §§ 15-20 in no way limit the inherent power and authority of the court to discipline and remove unworthy attorneys, nor limit its power and authority to adopt appropriate procedure therefor. Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Limitations imposed only by requirements of notice and fair hearing. — This section recognizes that when an attorney is formally charged before the court with conduct unworthy of an attorney, the court may adopt any appropriate procedure to enable it to exercise its inherent power and authority in the premises. The court is limited in the exercise of such power and authority only by the general principles of law which require that sufficient notice be given to the respondent to enable him to appear and defend against the charges, that it afford to him a fair and impartial hearing upon the charges made against him, and that discipline be administered or removal ordered only for misconduct ascertained by the court in proceedings so conducted. Barnes v. Walsh, 145 Me. 107, 72 A. (2d) 813.

Sec. 22. Resignation of attorneys.—Any member of the bar of this state may resign from the office of attorney and counselor at law by submitting his resignation to any justice of the supreme judicial court who may or may not, in his discretion, in the name of the state of Maine accept such resignation and order that such attorney's name be stricken 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. (R. S. c. 93, § 21.)

Sec. 23. Falsely advertising or representing himself to be an attorney.—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. (R. S. c. 93, § 22.)

Sec. 24. Management of causes by parties or counsel.—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. (R. S. c. 93, § 23.)

Contract between attorney and client for compensation may be inferred.—The circumstances under which a contract to pay a counselor at law for services rendered

and expenses incurred may be inferred, and the character and effect of that contract do not essentially differ from those which pertain to and regulate contracts for other professional services, skilled labor of any kind, and, in fact, any kind of service in which the amount of the compensation necessarily depends largely upon the circumstances under which the service is rendered, its nature, and the charges that are usual and customary for like services. McLellan v. Hayford, 72 Me. 410.

Retainer fee is remuneration for foregoing employment with other party. — The proper scope and application of the right to charge retainers are to remunerate counsel for being deprived, by being retained for one party, of the opportunity of rendering services for, and receiving pay from the other. McLellan v. Hayford, 72 Me. 410.

Attorney must prove at least implied promise.—In the absence of a special contract to pay retainers, the plaintiff must prove enough to show that there was an implied promise on the part of the defendant to pay them. McLellan v. Hayford, 72 Me. 410.

And instruction for reasonable fee without proof is not correct.—In the absence of any evidence tending to establish the existence of a particular usage, with reference to which an attorney and his client may be presumed, under the circumstances, to have made their contract, an instruction that such fees were a legal charge, and the plaintiff was entitled to recover a reasonable amount for retainer fees is not correct. McLellan v. Hayford, 72 Me. 410.

Attorney may secure continuance binding upon client.—An attorney retained to manage a cause before any tribunal has authority to apply for a continuance or postponement of the trial or hearing; and he may make an agreement to effect that object, which will be binding upon his client. Phillips v. Rounds, 33 Me. 357.

But has no authority to execute replevin bond unless ratified.—An attorney, by virtue of his general employment for his client, has no authority to execute a replevin bond in his name. But if the client subsequently ratifies such an execution of the bond, it becomes his deed. And the prosecution by him of the replevin suit is such a ratification. Narraguagus Land Proprietors v. Wentworth, 36 Me. 339.

Section authorizes parties to manage own cases. — Under authority of this section parties are permitted and have the right to argue and manage their own cases before the courts and this is true whether the case be before a court at nisi prius or in an appellate or law court. In re Smith, 145 Me. 174, 74 A. (2d) 225.

But presence of prisoner not required in appellate court. — Neither the constitution of the United States nor the constitution of Maine requires the personal presence in court of a person charged with crime when his case is argued before an appellate or law court upon a bill of exceptions taken in the court below. In re Smith, 145 Me. 174, 74 A. (2d) 225.

An oral argument may be circumscribed as to prisoners.—Oral argument on appeal is not an essential ingredient of due process and it may be circumscribed as to prisoners, who are parties, where reasonable necessity so dictates. In re Smith, 145 Me. 174, 74 A. (2d) 225.

Since bringing prisoners before appellate court not desirable.—The practice of bringing a prisoner confined in the state prison before the supreme judicial court, sitting as a court of law, to personally argue his exceptions to the discharge of a writ of error by which he seeks his release from such imprisonment would be an undesirable practice, and one not to be encouraged. In re Smith, 145 Me. 174, 74 A. (2d) 225.

The prohibition in this section was intended to authorize the dismissal of a suit instituted and maintained in contravention of its terms. National Publicity Society v. Raye, 115 Me. 147, 98 A. 300.

As where judge, prohibited from practicing, brings action.—Where an action is brought by a judge as attorney, who, because of his position as judge, is expressly prohibited from bringing and maintaining the action; such action will be dismissed. National Publicity Society v. Raye, 115 Me. 147, 98 A. 300.

For proceedings in a suit by a person not entitled to practice are a nullity and the suit will be dismissed. National Publicity Society v. Raye, 115 Me. 147, 98 A. 300.