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Chapter 106.

Superior Court.

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Superior Court; Constitution, General Jurisdiction and Powers.

Sec. 1. Constitution of the court. — The superior court, as heretofore established, shall consist of 8 justices and such active retired justices as may be appointed and serving on said court, learned in the law and of sobriety of manners. The chief justice of the supreme judicial court shall assign the justices of the superior court to hold the trial terms of said court. Whenever in the opinion of the chief justice of the supreme judicial court it becomes necessary, he may designate a justice of the supreme judicial court or any active retired justice of the supreme judicial court or of the superior court to hold a term of said superior court, or may designate any of such justices or a justice of the superior court to hold one or more sessions thereof, separate from the session presided over by the justice holding the regular trial term. (R. S. c. 94, § 1. 1953, c. 409, § 1.)

Cross references.—See Me. Const., Art. 5, Part First, § 8, re appointment; Me. Const., Art. 6, § 4, re term of office; c. 103, § 2, re appointment of additional judges; c. 104, § 4, re reporter of decisions to furnish advance sheets.

Cited in Hamilton v. George, 129 Me. 474, 152 A. 631.

Sec. 2. Salary; expenses.—Each of the justices of the superior court shall receive an annual salary of $10,500. All provisions of section 4 of chapter 103 relating to reimbursement of justices of the supreme judicial court for expenses incurred by them shall apply to justices of the superior court, except that justices of the superior court shall not be entitled to reimbursement for expenses incurred in employing clerical assistance. (R. S. c. 94, § 2. 1945, c. 331, § 2. 1951, c. 403, § 2.)

Sec. 3. Compensation upon retirement. — Any justice of the superior 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 such justice for at least 7 consecutive years, shall receive annually during the remainder of his life an amount equal to ¾ of the salary which was being paid to him at the 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. An active retired justice shall receive annually, beginning January 1st, 1951, an amount equal to ¾ of the salary now paid to justices of said court. 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 superior 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 superior court and approved by a majority of the justices of the superior 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. 94, § 3. 1949, c. 369, § 2. 1951, c. 234; c. 266, § 111. 1953, c. 338.)

Sec. 4. Active retired justices.—Any justice of the superior court who having attained the age of 70 years and having served as such justice on either or both the supreme judicial court or the superior court for at least 7 consecutive years resigns his said office, or ceases to serve at the expiration of any term thereof, shall be eligible for appointment as an active retired justice of the superior court as hereinafter provided. The governor with the advice and consent of the council may, upon being notified of the retirement of any such justice under the provisions of this section, appoint such justice to be an active retired justice of the superior court for a term of 7 years from such appointment, unless sooner removed, and such justice may be reappointed for a like term, and such justice so appointed and designated shall thereupon constitute a part of the court from which he has retired and shall have the same jurisdiction and be subject to the same restrictions therein as before retirement, except that he shall act only in such cases and matters and hold court only at such terms and times as he may be directed and assigned to by the chief justice of the supreme judicial court. Any active retired justice of the superior court may be directed by the chief justice to hold any term of the superior court in any county and when so directed shall have authority and jurisdiction therein the same as if he were the regular justice of said court; and whenever the chief justice of the supreme judicial court so orders, may hear all matters and issue all orders, notices, decrees and judgments in vacation that any justice of said superior court is authorized to hear and issue.

The provisions of this section shall apply to the present and former justices of said court. Provided, however, that such justices 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. 94, § 4. 1945, c. 121, § 1. 1947, c. 9. 1949, c. 139, § 4.)

See c. 113, § 188, re stenographers.

Sec. 5. Jurisdiction; powers.—The superior court, exclusive of the supreme judicial court, shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters either original or appellate which were, prior to January 1st, 1930, within the jurisdiction of the supreme judicial court or any of the superior courts except as concurrent jurisdiction is vested in the several municipal courts and except as provided in sections 1 and 2 of chapter 107, provided that it shall have and exercise none of the jurisdiction, power, duties and authority of the supreme judicial court sitting as a law court. (R. S. c. 94, § 5. 1947, c. 16.)

Applied in Kennebec Steam Towage Co. v. Rich, 100 Me. 62, 60 A. 702; Maine Broadcasting Co. v. Eastern Trust & Banking Co., 142 Me. 220, 49 A. (2d) 224.

Cited in Trask v. Trask, 114 Me. 60, 95 A. 352; State v. Leo, 128 Me. 441, 148 A. 563; White v. Shalit, 136 Me. 65, 1 A. (2d) 765.

Sec. 6. Rules; judicial notice by supreme judicial court.—The justices of the superior court may adopt rules governing the proceedings in said court, but until such rules are adopted and published, the rules of the supreme judicial court shall govern the proceedings unless inconsistent with the provisions of this chapter. The supreme judicial court shall take judicial notice of the rules of the superior court. (R. S. c. 94, § 6.)

Rules have force of statute.—The rules established in pursuance of the authority granted by this section have all the binding and obligatory force of a statute. They are binding on any justice at nisi prius, or on the supreme judicial court sitting in banc. Neither the court, nor any member, can dispense with or disregard them. Hutchins v. Hutchins, 136 Me. 513, 4 A. (2d) 679.

Sec. 7. Conferences. — The chief justice of the supreme judicial court may from time to time call together the several justices of the superior court at such place as he may appoint for conference as to the conduct and dispatch of judicial business and interchange of views in matters of practice in said court. In addition to their salaries and expenses in holding the several terms of court to which they are assigned, the several justices shall be entitled to their actual cash disbursements in attending such conferences. (R. S. c. 94, § 7.)

Sec. 8. Clerk.—The clerk of the judicial courts in any county shall act as the clerk of the superior court in such county. Any deputy clerk, if his appointment has been approved by a resident justice of said superior court or by the chief justice of the supreme judicial court, may, whenever directed by the clerk, act as clerk of the superior court at any or either session thereof in that county. (R. S. c. 94, § 8.)

Sec. 9. Seal; form of writs and processes; facsimile signature of clerk.—The justices of the superior court shall establish a seal for said court and all writs and processes therefrom shall be in the name of the state, in the usual form, bearing the teste of any justice of said court, under the seal of said court; they shall be signed by any one of its clerks and obeyed and executed throughout the state, and may be made returnable in the superior court in any other county in which the action might be legally brought. Executions issued by the supreme judicial court prior to January 1st, 1930 may be reissued bearing the teste of any justice of the superior court and under the seal of said court. A facsimile of the signature of the clerks of the superior courts imprinted by or at their direction upon any writ, summons, subpoena, order or notice or order of attachment, except executions and criminal process, shall have the same validity as their written signature. (R. S. c. 94, § 9. 1947, c. 46, § 2.)

Bearing an improper seal, a writ is as though it bears no seal. The defect may not be remedied by amendment, nor can it be waived. Parties cannot confer jurisdiction by agreement. To such a defect, motion to dismiss will lie at any stage of the proceedings. Hamilton v. George, 129 Me. 474, 152 A. 631.

A writ entered in court must show on its face one of two things: That it was issued by the clerk of courts for the county where it is entered; or that it was issued by the clerk of courts for another county and made returnable where entered. Belfast v. Bath, 137 Me. 91, 15 A. (2d) 249.

Writ must be signed by incumbent clerk. —The statutory requirement, that superior court writs shall be signed, means by an incumbent clerk. The absence of such a signature is a matter of substance which the power of amendment cannot reach. Israelson v. Gallant, 130 Me. 213, 154 A. 574.

Clerk cannot sign writ issuing from county other than his own.—The legislative intent by this section was not to enlarge and extend the authority of a clerk of the superior court so that he may sign writs which purportedly issue from a county other than his own. Belfast v. Bath, 137 Me. 91, 15 A. (2d) 249.

Sec. 10. Writs when returnable.—All writs of the superior court returnable at a regular term of court in the county of Cumberland shall be made returnable at one of the next 3 terms to be begun and held after the issuing there-

of, and in the counties of Androscoggin, Kennebec and Penobscot at one of the next 2 terms to be so begun and held. In all other counties such writs shall be made returnable at the first term of court to be held more than 14 days after issuing thereof. (R. S. c. 94, § 10.)

Sec. 11. Trial terms.—For the trial of civil actions and persons accused of offenses and for the transaction of all business within the jurisdiction of the superior court, the trial terms of the superior court shall be held annually by one justice at the following places and times, and the justices shall so hold said terms as directed by the chief justice of the supreme judicial court, that their services shall be divided to each county as equally as may be:

I. Androscoggin: At Auburn on the 1st Tuesdays of January, March, April, June, September and November for civil and criminal business, provided that the grand jury shall attend only at the January, June and September terms, unless specially summoned by order of a justice of said court. All recognizances for appearance to abide action by the grand jury shall be for appearance at the term at which the next regular session of the grand jury is held, but appeals in criminal as well as civil matters and removals shall be to the next regular term.

II. Aroostook: At Houlton on the 1st Tuesday of April and the 2nd Tuesday of November for civil and criminal business, at Caribou on the 1st Tuesday of February for civil business and at Houlton on the 2nd Tuesday of September for criminal business and by adjournment at Caribou for civil business, provided that the grand jury shall only attend at the April and November terms unless specially summoned by order of a justice of said court. All recognizances for appearance to abide action by the grand jury shall be for appearance at the term at which the next regular session of the grand jury is held, but appeals in criminal matters shall be to the next regular term except the February term. (1945, c. 1. 1949, c. 126. 1951, c. 266, § 112)

III. Cumberland: At Portland on the 1st Tuesday of every month except July and August; but the criminal business of said county shall be transacted at the terms held on the 1st Tuesdays of January, May and September, together with civil business. The January, May and September terms of said court may be kept open for criminal business after their final adjournment for civil business for such time as the presiding justice may deem expedient, provided that they shall be finally adjourned at least 7 days before the convening of the next succeeding term in which criminal business may be done.

IV. Franklin: At Farmington on the 2nd Tuesdays of February, May and October; the May term shall be held without a grand jury and with but 1 traverse jury unless a justice of said court shall otherwise specially order, in which case the clerk shall send venires for the requisite number of traverse jurors and shall summon the grand jury of the preceding term, as the terms of said order may require. All recognizances from municipal courts and trial justices in which parties are held to await the action of the grand jury, made returnable to said May term, shall, when no grand jury is in attendance, be continued to and have day in the next term of the court held in said county.

Criminal as well as civil business may be transacted at the June (now May) term, but no grand jury is present unless specially ordered, and in case no such special order is made, all recognizances to such term are continued. Welch v. Sheriff of Franklin County, 95 Me. 451, 50 A. 88.

V. Hancock: At Ellsworth on the 2nd Tuesdays of April and September and the 1st Tuesday of December. (1953, c. 166)

VI. Kennebec: At Augusta on the 1st Tuesdays of February, April, June and October, but the criminal business of said county shall be transacted at

the terms held on the 1st Tuesdays of February, June and October, together with civil business.

VII. Knox: At Rockland on the 2nd Tuesday of February and the 1st Tuesdays of May and November.

VIII. Lincoln: At Wiscasset on the 2nd Tuesdays of May and November.

IX. Oxford: At Rumford on the 1st Tuesday of March, and at Paris on the 1st Tuesday of November and on the 2nd Tuesday of June.

X. Penobscot: At Bangor on the 1st Tuesdays of January, April, September and November and the criminal business of said county shall be transacted at the terms held on the 1st Tuesdays of January, April and September, together with civil business. All recognizances from municipal courts and trial justices in which parties are held to await the action of the grand jury, made returnable to said April term, shall, when no grand jury is in attendance, be continued to and have day in the next term of the court held in said county.

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

XII. Sagadahoc: At Bath on the 2nd Tuesdays of January, June and October. (1953, c. 181, § 1)

XIII. Somerset: At Skowhegan on the 2nd Tuesdays of January, May and September.

XIV. Waldo: At Belfast on the 1st Tuesday of January and the 2nd Tuesdays of April and October.

XV. Washington: At Machias on the 2nd Tuesdays of February and October, and at Calais on the 2nd Tuesday of June.

XVI. York: At Alfred on the 2nd Tuesday of January and 1st Tuesdays of May and October. (R. S. c. 94, § 11. 1945, c. 1. 1949, c. 126. 1951, c. 266, § 112. 1953, c. 166; c. 181, § 1.)

Section applied in Dover-Foxcroft v. Lincoln, 135 Me. 184, 192 A. 700. Me. 423; Kehail v. Tarbox, 112 Me. 327, 92 A. 182.

Section cited in McAlpine v. Smith, 68

Sec. 12. Simultaneous and special sessions. — Two or more simultaneous sessions of the superior court may be held in the same county, or special sessions thereof may be held in any county, whenever the chief justice of the supreme judicial court determines that public convenience so requires; and the business may be so divided as to secure its speedy and convenient disposal. Special sessions of the superior court for the transaction of civil or criminal business or both may be held in any county at any time whenever the chief justice of the supreme judicial court determines that public convenience and necessity so require. (R. S. c. 94, § 12.)

Sec. 13. Sheriff or deputy to attend court; justice not attending, court adjourned.—The sheriff of each of said counties shall attend the superior court thereof unless the supreme judicial court is in session in such county in which case he shall specially designate a deputy, approved by the justice of such superior court, so to attend. When no justice attends on the day for holding a court, the sheriff or in his absence the clerk shall, by oral proclamation in the courthouse and by notice posted on the door thereof, adjourn the court from day to day until a justice attends and, in case of necessity, upon order of the chief justice or the justice appointed to hold said court, to a fixed day or without day; and when so adjourned without day, actions brought for that term shall be entered by the clerk and they, with all actions on the docket, shall be continued to the next term. (R. S. c. 94, § 13.)

This section clearly provides that the entries are to be made at the final adjournment, when no justice appears and it becomes necessary to adjourn, and the whole

docket is to be continued. In such case the defendant must have the right to file his plea or make his motion, on the first day of the next term, if the court is regularly held on that day. First Nat. Bank of Brunswick v. Lime Rock F. & M. Ins. Co., 56 Me. 424.

Quoted in part in Bowden's Case, 123 Me. 359, 123 A. 166.

Sec. 14. Exceptions, in civil and criminal cases; proceedings, if deemed frivolous; motions for new trial.—When the court is held by 1 justice, a party aggrieved by any of his opinions, directions or judgments in any civil or criminal proceeding may, during the term, present written exceptions in a summary manner signed by himself or counsel, and when found true they shall be allowed and signed by such justice; provided, however, that in all cases, such exceptions shall be presented within 30 days after the verdict is rendered or the opinion, direction or judgment is announced in the case in which such verdict, opinion, direction or judgment is made; but if he deems them frivolous and intended for delay, he may so certify on motion of the party not excepting; and such exceptions may then be transmitted at once by such justice to the chief justice and shall be argued in writing on both sides within 30 days thereafter, unless the presiding justice for good cause enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be and the decision certified to the clerk of the county where the case is pending. The provisions of this section apply to exceptions filed in any civil or criminal proceedings in the superior court. If the justice of the supreme judicial court or of the superior court disallows or fails to sign and return the exceptions or alters any statement therein, in either civil or criminal proceedings, and either party is aggrieved, the truth of the exceptions presented may be established before the supreme judicial court sitting as a court of law, upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The supreme judicial court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed. All motions for new trials, as against law or evidence, shall be filed during the term at which verdict is rendered, but in no case later than 30 days after verdict rendered. (R. S. c. 94, § 14.)

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See c. 107, § 15 and note.

I. GENERAL CONSIDERATION.

The spirit of this section is that the procedure in trials shall be directed to a speedy, as well as a correct determination of the litigation; that all objections shall be seasonably and clearly made, and all exceptions plainly stated and noted while the thing is being transacted; while steps may be retraced, and errors may be corrected. McKown v. Powers, 86 Me. 291, 29 A. 1079.

The purpose of a bill of exceptions is to put the decision objected to upon record for the information of the law court. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

Origin and nature of bills of exceptions.—See McKown v. Powers, 86 Me. 291, 29 A. 1079.

There are three parties to a bill of exceptions—the parties to the suit and the justice who is presiding. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68; Gregoire v. Lesieur, 146 Me. 203, 78 A. (2d) 494.

And bill cannot be amended without consent of all parties.—When once presented and allowed, neither counsel nor the presiding justice can add anything or amend the bill without the consent of all parties. State v. Holland, 125 Me. 526, 134 A. 801.

Neither the parties, nor their counsel, can agree, without the consent of the presiding justice, to make material alterations in a bill after allowance and signing. The judge himself cannot change it during the term without the consent of the excepting party, or on notice. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

The justice who presides over the term at which the exceptions are taken is the only justice who has authority over the bill of exceptions. He is the one who certifies to the truth of the facts stated in the bill. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68; Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

And if no bill presented to him there are no exceptions before appellate court.—Under this section, if no bill of exception is presented to and allowed by the justice presiding at the trial, there are no exceptions before the appellate court for decision. State v. Morin, 149 Me. 279, 100 A. (2d) 657.

Exceptions should not be allowed unless found to be true.—The law court should not be expected to correct statements in a bill which has been allowed and signed by the presiding justice, by a search of the record. The exceptions should not be allowed unless found to be true; "when found true they shall be allowed and signed by such justice." Johnson v. Bangor Ry. & Elec. Co., 125 Me. 88, 131 A. 1.

And law court bound by facts certified.—The justice presiding at the term certifies to the truth of the statements and contentions in the pending bill of exceptions, and for the purposes of this decision the law court is bound by the facts as so certified. Bubar v. Sinclair, 146 Me. 155, 79 A. (2d) 165.

The exceptions must be deemed to be true, and will be considered as stated without reference to the pleadings, exhibits and testimony, except as the latter is quoted in the bill. Johnson v. Bangor Ry. & Elec. Co., 125 Me. 88, 131 A. 1.

And certificate conclusive as to regularity of exceptions.—The certificate of the presiding justice that the exception was allowed is conclusive in the supreme judicial court of the regularity of the filing and allowance of the exceptions. Poland v. McDowell, 114 Me. 511, 96 A. 834; Colby v. Tarr, 140 Me. 128, 34 A. (2d) 621. See Graffam v. Casco Bank & Trust Co., 137 Me. 148, 16 A. (2d) 106.

Bill must be signed by excepting party or his counsel.—A bill of exceptions, although signed by the presiding justice, will not be considered by the law court, unless signed by the excepting party or his counsel, as required by this section. Butler v. Bangor, 67 Me. 385.

Disallowance of bill does not deprive party of his rights.—If a true bill of exceptions is presented to the presiding justice and he does not allow the same, the disallowance does not deprive the excepting party of his rights. He can proceed under this section to establish the truth of the exceptions before the law court. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68. See Stern v. Fraser Paper, 138 Me. 98, 22 A. (2d) 129.

The justice who heard the case having declined to allow exceptions, it is the duty of the law court, upon proper petition therefor, to establish the exceptions, under the provisions of this section. Curtis v. Cornish, 109 Me. 384, 84 A. 799.

But the right to prove exceptions has always been regarded as strictissimi juris. The purpose of a petition to prove exceptions is to contradict and control the statement of a judge made under his oath of office and his official responsibility. It is fit that, before the supreme court entertains such a petition, some person with a knowledge of the fact should make oath to its truth. Graffam v. Cobb, 98 Me. 200, 56 A. 645.

When remedy to establish truth of exceptions is available. — This section declares that: "The truth of the exceptions presented may be established before the supreme judicial court sitting as a court of law, upon petition setting forth the grievance." Earlier language indicates that this remedy is available if either party is aggrieved when a single justice (1) disallows written exceptions presented to him, (2) fails to sign them, or (3) "alters any statement therein." Colby v. Tarr, 140 Me. 128, 34 A. (2d) 621.

Whether party given opportunity for oral argument if justice considers exceptions frivolous is left to discretion of justice.—Under this section, the question as to whether or not the exceptions shall be presented to the justices for determination when the presiding justice deems them frivolous, without the opportunity of oral argument, is left to the discretion of the justice presiding. He may certify that the exceptions are deemed by him frivolous, and still may not order them transmitted to be argued, considered and determined in this summary manner. He may be of the opinion, notwithstanding his adjudication that the exceptions are frivolous, that the party should have an opportunity to argue the case orally before the law court. State v. Edminister, 101 Me. 332, 64 A. 611.

Former provision of section.—For cases

under this section when it applied, in civil cases, only to procedure in the supreme judicial court, see Cole v. Cole, 112 Me. 315, 92 A. 174; Nissen v. Flaherty, 117 Me. 534, 105 A. 127.

Applied in Thorn v. Mosher, 60 Me. 463; Spaulding v. Farwell, 62 Me. 319; Merrill v. Merrill, 65 Me. 79; Hanley v. Sutherland, 74 Me. 212; Andrews v. King, 77 Me. 224; Frank v. Mallett, 92 Me. 77, 42 A. 238; Darling v. Bradstreet, 113 Me. 136, 93 A. 50; Chasse v. Soucier, 118 Me. 62, 105 A. 853; State v. Burgess, 123 Me. 393, 123 A. 178; State v. Castino, 124 Me. 445, 128 A. 920; State v. Howard, 124 Me. 448, 130 A. 917; Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

Cited in State v. Dresser, 54 Me. 569; Fish v. Baker, 74 Me. 107; Rockland Savings Bank v. Alden, 104 Me. 416, 72 A. 159; Dyer v. Cumberland County Power & Light Co., 119 Me. 224, 110 A. 357; Stowell v. Hooper, 121 Me. 152, 116 A. 256; Hadlock, Petitioner, 142 Me. 116, 48 A. (2d) 628.

II. RIGHT TO EXCEPT.

Opinions, directions, etc. in all cases are subject to exception.—In all cases at law when court is held by a single justice his opinions, directions or judgments may be attacked by exceptions. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12; Clapperton v. United States Fidelity & Guaranty Co., 148 Me. 257, 92 A. (2d) 336.

No judgment can be rendered, except by consent, without allowing to the aggrieved party the time prescribed by this section, in which to present his exceptions. Crooker v. Buck, 41 Me. 355.

By either party.—The statute language, "a party aggrieved," carries import that relief was intended to be available to both parties to litigation. Colby v. Tarr, 140 Me. 128, 34 A. (2d) 621.

If either party is aggrieved by any of the decisions of the judge, in matters of law, it is his right to allege his exceptions thereto. Baker v. Johnson, 41 Me. 15.

But the excepting party must be aggrieved. Harriman v. Sanger, 67 Me. 442.

In actions at law the right of exception is limited to "a party aggrieved." Abbott v. Abbott, 106 Me. 113, 75 A. 323; Perkins v. Kavanaugh, 135 Me. 344, 196 A. 645.

The party excepting must show that he is aggrieved by the ruling excepted to, or his exceptions will not be sustained. Bean v. Dolliff, 67 Me. 228.

Who is "party."—Where a person is not named in the writ as a party; does not prosecute or defend the action; and does not appear to be interested in its subject matter, he is not "a party" within the meaning of this section. Abbott v. Abbott, 106 Me. 113, 75 A. 323.

III. WHAT RULINGS SUBJECT TO EXCEPTIONS.

A. In General.

The excepting party can test the ruling made at nisi prius and none other. Harriman v. Sanger, 67 Me. 442.

And an exception is irregular if taken to an order made at a previous term. Barber v. Barber, 115 Me. 327, 98 A. 822.

The right of exception is limited to rulings upon questions of law. Prescott v. Winthrop, 101 Me. 236, 63 A. 923.

This section embraces only opinions, directions and judgments which are such in matters of law. Scruton v. Moulton, 45 Me. 417.

Exceptions will be sustained only when it appears from the exceptions themselves that the court mistook the law. State v. Cohen, 125 Me. 457, 134 A. 627.

And no exceptions to finding of fact can be allowed. Curtis v. Downes, 56 Me. 24.

It is irregular for the supreme court, under a bill of exceptions, to determine controverted matters of fact. Curtis v. Downes, 56 Me. 24.

Exceptions, when taken to findings of fact by a single justice, must attack such findings because of, and reach only, errors in law. There is no error in law in a finding of fact by a single justice unless such fact is found without any evidence to support it. Clapperton v. United States Fidelity & Guaranty Co., 148 Me. 257, 92 A. (2d) 336.

Nor do exceptions lie to the exercise of the judge's discretionary power. Cameron v. Tyler, 71 Me. 27.

It was not the intention of the legislature by the enactment of this section to subject the opinions, directions or judgments of a single judge, in matters of discretion submitted to him, to revision upon exceptions by the law court. York & Cumberland R. R. v. Clark, 45 Me. 151.

And party cannot except to rulings made with his consent.—The law provides that any party aggrieved by the ruling of the presiding judge may except. But he cannot except to a ruling made with his consent, however erroneous. Thompson v. Perkins, 57 Me. 290.

B. Specific Illustrations.

Exception may be taken to ruling concerning right to open and close.—Rulings concerning the right of opening and closing are an opinion and direction in a civil

proceeding of the court held by one justice. The contestant being aggrieved, he may seasonably present exceptions as authorized by this section. Rawley, Appellant, 118 Me. 109, 106 A. 120.

And to question of jurisdiction in matters of contempt.—Whatever doubts may be entertained as to a general right to except to the rulings and adjudications of the court in matters of contempt, where the jurisdiction is unquestioned, an exception may be taken on the question of jurisdiction, where it is distinctly raised and adjudicated upon as a matter of law. Androscoggin & Kennebec R. R. v. Androscoggin R. R., 49 Me. 392.

And to orders, etc. in declaratory judgment proceedings.—This section is applicable to proceedings to obtain a review of orders, judgments, and decrees of a justice made or rendered in proceedings at law to obtain a declaratory judgment. Clapperton v. United States Fidelity & Guaranty Co., 148 Me. 257, 92 A. (2d) 336.

And to rulings of justice sitting without jury.—See note to § 17.

But no exceptions will lie to the refusal of the judge at nisi prius to grant a review. York & Cumberland R. R. v. Clark, 45 Me. 151.

Nor to refusal to comment on testimony.—A refusal to comment generally upon selected portions of the testimony, can, in no case, be the ground of exceptions. It is for the presiding judge to determine finally how far his duty requires him to discuss or rehearse the testimony. Darby v. Hayford, 56 Me. 246.

And exceptions do not lie to decisions concerning amount, etc., of widow's allowance.—The amount of a widow's allowance and the kind of property of which it shall consist are questions which must be determined by an exercise of judgment and judicial discretion; and it is well settled that to such decisions exceptions do not lie. True, this section declares that, when the court is held by one justice, "a party aggrieved by any of his opinions, directions or judgments" may except; but this provision has always been construed to include only opinions, directions and judgments upon questions of law, and not to include such opinions, directions or judgments as are the result of evidence, or the exercise of judicial discretion. Dunn v. Kelley, 69 Me. 145.

Nor do they lie to the discharge of a prisoner upon habeas corpus. The provisions of this section are applicable to another class of cases and not to proceedings of this nature. Stuart v. Smith, 101 Me. 397, 64 A. 663.

And omissions are not a subject of exceptions unless they occur after a special request of a party for their supply. Exceptions can be alleged by a party thinking himself aggrieved only to any opinion, direction or judgment of the presiding judge, in any action or process, civil or criminal. State v. Conley, 39 Me. 78.

IV. WHEN EXCEPTIONS PRESENTED.

Bills must be presented during term and within 30 days of ruling complained of.—This section requires that bills be presented "during the term," and if the term shall be a long one, "within 30 days" of the ruling complained of. The substance must be reduced to writing while the thing is transacting, because it is to become a record. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68. See Carleton v. Lewis, 67 Me. 76.

Bills must be presented "during the term," to the justice presiding, stating each issue of law in a clear, distinct, and "summary" manner as required by this section, "and when found true" they are allowed and signed by the presiding justice, "provided however that in all cases, such exceptions shall be presented within 30 days." Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

As must evidence made part of bill.—If all the evidence is made a part of the bill of exceptions, or if for any reason the complete evidence is to be a necessary part of the printed case, it must be filed within the term or within thirty days, unless there is an extension of time shown by docket entry. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

It is presumed that the bills of exceptions being allowed and signed, were complete in themselves, and did not require the entire evidence as "a part." If it was made a part, the attorney for the plaintiff should have had a time fixed for filing, otherwise it should have been filed during the term or within thirty days. If the evidence was not a part of the exceptions there was no necessity for filing. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

And in motions for new trials also, the evidence must be filed within thirty days, unless the time is extended. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

But time requirements may be waived.—Parties to litigation may, with the consent of the court, waive time requirements for the filing of exceptions, either expressly

or by implication. Colby v. Tarr, 140 Me. 128, 34 A. (2d) 621.

It is competent for the parties, with the consent of the presiding justice, to waive, expressly or impliedly, the requirements of this section. Such is not an uncommon practice. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

And it is not necessary that the record show support for a finding of waiver as to enlarging statutory time requirements. Colby v. Tarr, 140 Me. 128, 34 A. (2d) 621; Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

For certificate is decisive on that question.—In order to avoid frequent controversy and litigation as to whether or not there had in fact been waiver and consent as to the time requirements of this section, reliance is placed on the certificate of the justice allowing the exceptions and that certificate is decisive of the question. It is assumed that the justices below will not permit unreasonable enlargements of time, but will promote an end to litigation and will not be unmindful of any definite and positive denial of waiver and consent by any party. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

The unqualified allowance of an extended bill of exceptions by the justice who presided at the term creates a conclusive presumption that it was regularly and properly filed and allowed. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

The supreme judicial court assumes that no justice will allow exceptions after the time fixed by him has expired solely in reliance upon the protection afforded his action by the "conclusive presumption," whenever he knows that the time has expired and there is in fact no consent to further extension. It is assumed that, in every such case, the justice will afford both parties an opportunity to be heard. Such is his duty. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

Unless it is qualified.—Where it is clear that there has been no waiver and consent and the certificate of allowance after the term is qualified in that respect, the bill of exceptions is deemed to be filed and allowed too late. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

Justice may grant privilege of presenting exceptions after adjournment.—It happens sometimes, especially in cases tried near the end of a term, that it is difficult or even impossible to put a bill of exceptions in shape for allowance without unduly delaying the adjournment of the term. And in such cases, it is not improper for the justice, with the consent of the parties, to grant the privilege of presenting the exceptions for allowance at a later time. This may be done by consent, not otherwise. And when a bill of exceptions is allowed, it is conclusively presumed that it is properly allowed in this respect. Poland v. McDowell, 114 Me. 511, 96 A. 834. See Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

It is the well understood and long continued practice for the presiding justice to grant an extension of time beyond the close of the term for filing an extended bill of exceptions and, where necessary, for filing the transcript of the testimony. State v. Johnson, 145 Me. 30, 71 A. (2d) 316.

And may further enlarge time.—Just as waiver and consent given expressly or by implication during the term will operate to permit the presiding justice to enlarge the time for filing an extended bill beyond the term, so also and only by such waiver and consent the parties may permit the same justice to further enlarge the time beyond the date originally set, when it becomes apparent to them that for good cause the original deadline for filing and allowance cannot be met. Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

But not without waiver and consent.—The presiding justice is not only required to allow exceptions after the term is adjourned, but, without waiver and consent, he has no power to do it. Poland v. McDowell, 114 Me. 511, 96 A. 834; Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68; State v. Johnson, 145 Me. 30, 71 A. (2d) 316; Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

And reservation of privilege during term.—Exceptions should not be allowed if they were not presented to the presiding justice until after the term adjourned, and it does not appear that any privilege was reserved during term time to present them later. Poland v. McDowell, 114 Me. 511, 96 A. 834.

Exceptions after close of term deemed presented at date of docket entry.—Where an entry was made upon the docket of the court, "Exceptions filed and allowed," the effect of this entry under our practice and the decisions of the supreme court must be construed to be that the presentation of a bill of exceptions after the close of the term shall, by consent of parties, be considered as presented as of the date of the docket entry. Borneman v. Milliken, 118 Me. 168, 106 A. 345; Carey v. Bourque-

Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

It is customary in practice, however, because of time necessary to prepare a formal bill, to note upon the term docket that exceptions have been "filed and allowed." Then if the exceptant believes that he will not have sufficient time or opportunity to write out and to prepare a complete bill of exceptions before adjournment, or if there will be an unavoidable delay due to transcription of evidence by the court reporter, it is also the practice of the exceptant to ask the presiding justice for an extension, by making further docket entry that the completed bill may be filed on or before a certain date. In this manner the statute has been complied with, the exceptions are filed and allowed "during the term," leaving only mechanical details for some future time. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68; Carey v. Bourque-Lanigan Post No. 5, 149 Me. 390, 102 A. (2d) 860.

The burden of securing an order of court for an extension for filing a bill of exceptions is on the party who desires it. There is no duty on the part of the presiding justice to seek out parties to ascertain if extra time is necessary. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

V. SUFFICIENCY OF EXCEPTIONS.

Exceptions must present issues of law to be considered. — Under this section, the supreme judicial court has jurisdiction over exceptions in civil and criminal proceedings only when they present in clear and specific phrasing the issues of law to be considered. Bronson, Appellant, 136 Me. 401, 11 A. (2d) 613; Simmons, Appellant, 136 Me. 451, 12 A. (2d) 417; McDougal v. Hunt, 146 Me. 10, 76 A. (2d) 857; Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

Separately, clearly and in summary manner.—A bill of exceptions must separately present each issue of law in that clear, distinct, summary manner required by this section. If, instead of separating the various rulings, and presenting each by itself clearly and comprehensively, so that each may be understandingly considered and determined, the excepting party presents all or nearly all the rulings indiscriminately and in a confused mass, thus throwing upon the court a great and unnecessary labor of research and analysis, the bill is not sufficient and the supreme court is not bound to consider exceptions presented in this manner. McKown v. Powers, 86 Me. 291, 29 A. 1079; Dennis v. Waterford Packing Co., 113 Me. 159, 93 A. 58.

This section contemplates that the exceptions shall be stated separately, pointedly and concisely. It requires that they shall be presented, "in a summary manner," that is, within a narrow compass. McKown v. Powers, 86 Me. 291, 29 A. 1079; Gerrish v. Chambers, 135 Me. 79, 189 A. 187.

This section contemplates that the exceptions to each ruling shall be written specifically, though the various exceptions may be combined in one bill. McKown v. Powers, 86 Me. 291, 29 A. 1079.

As the purpose of a bill of exceptions is to present in clear and specific phrasing the issues of law to be considered, each ruling objected to should be clearly and separately set forth. Rulings which are claimed to be erroneous should be stated separately, pointedly, concisely. Gerrish v. Chambers, 135 Me. 79, 189 A. 187.

The purpose of a bill of exceptions is to present in clear and specific phrasing the issues of law to be considered by this court. Each ruling objected to should be clearly and separately set forth. The very purpose of the bill is to withdraw from the mass of rulings those which it is claimed are erroneous, and exceptions are only presented in a "summary manner" in accordance with the statute when they are stated separately, pointedly and concisely. Dodge v. Bardsley, 132 Me. 230, 169 A. 306; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

And general exception does not comply with section.—The presentation of a mere general exception to a judgment rendered by a justice at nisi prius does not comply with this section. Gerrish v. Chambers, 135 Me. 79, 189 A. 187; Bronson, Appellant, 136 Me. 401, 11 A. (2d) 613; Simmons, Appellant, 136 Me. 451, 12 A. (2d) 417; Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

The supreme judicial court might well decline to entertain an exception which is drawn in such general language as not to comply with the established rules. State v. Howard, 117 Me. 69, 102 A. 743.

Thus general exception that finding was erroneous in law is not sufficient. — If the ground of exception to the finding of a single justice is that it was erroneous in law because there was no evidence to support it, or because his finding was made without any evidence, such ground must clearly appear in the bill of exceptions. A general exception on the ground that the

finding was erroneous in law is not sufficient. Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

As exception must show on its face in what respect finding was erroneous.—Exceptions to the findings of a single justice on the ground that they are erroneous in law, to be within the rule of this section, must on their face show in what respect the ruling is in violation of law. Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

And if it is claimed that finding is without evidence to support it such must be alleged.—If it is claimed that the error in law is because the finding of fact is without any evidence to support it, the bill of exceptions should contain such allegation or its equivalent. Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

And exceptions to entire charge are ineffectual.—Exceptions to the whole charge are ineffectual. Exceptions can only be made to single propositions of law laid down in the charge. McKown v. Powers, 86 Me. 291, 29 A. 1079. See State v. Jones, 137 Me. 137, 16 A. (2d) 103.

An exception can only be taken on some particular point of law, for a mere general exception to a general charge amounts to nothing. Harriman v. Sanger, 67 Me. 442.

The practice of reporting exceptions to the whole of a charge cannot be too strongly discountenanced, as inconvenient and irregular. The points of law should be clearly and distinctly presented, and the facts should be stated as fully as is necessary to enable the court to appreciate the applicability of the instructions and determine their correctness. A full report of the evidence and of the charge, embracing the material and immaterial, the relevant and the irrelevant, should be avoided as unnecessarily expensive to the parties and uselessly burdensome to the court. Bradstreet v. Bradstreet, 64 Me. 204.

Unless entire charge is erroneous. — A general exception to the entire charge will not avail a party unless the entire charge be erroneous. Harriman v. Sanger, 67 Me. 442.

A general exception to the whole charge and to each part of it, when the charge involves more than a single proposition of law, and is not in all respects erroneous, presents no question for review on appeal. Harriman v. Sanger, 67 Me. 442.

A general exception to the charge, or to a series of propositions therein contained, cannot be sustained when any independent portion excepted to is sound. Harriman v. Sanger, 67 Me. 442.

Even though whole of charge set out in bill.—The first exception is to "so much of the charge of the presiding justice as excludes from the consideration of the jury all claims of the plaintiffs under the statute declared on." To be sure the entire charge and the transcript of the evidence are made a part of the exceptions, but this form of stating exceptions has received the repeated disapproval of the court. It meets neither the requirements of the statute nor the decisions based thereon. The portion of the charge complained of is not stated. The questions asked and the evidence excluded do not appear. It is not a "summary" bill. Small v. Wallace, 124 Me. 365, 129 A. 444.

Bill must stand alone. — The bill itself must state the grounds of exceptions in a summary manner. The bill must be able to stand alone. Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

And exceptant must see that it contains all that is necessary for decision. — The excepting party is bound to see that the bill of exceptions includes all that is necessary to enable the court to decide whether the rulings of which he complains were or were not erroneous. Failing so to do, his exception must fail. Bronson, Appellant, 136 Me. 401, 11 A. (2d) 613; Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

For the court cannot go outside the bill itself to determine that rulings are erroneous and prejudicial, even if the evidence accompanies the bill. The bill itself must state the grounds of exception in a summary manner. The bill must be able to stand alone. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

The supreme judicial 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. Cohen, 125 Me. 457, 134 A. 627.

A bill of exceptions under this section, when presented to the court below for allowance, should summarily set forth the issue, the ruling of the court excepted to, and contain within itself, by reference or otherwise, and in succinct form, sufficient to show that the excepting party was aggrieved, as the supreme judicial court cannot travel outside the bill itself to supply

its deficiencies. State v. Holland, 125 Me. 526, 134 A. 801.

And bill cannot be supplemented by argument of counsel.—Bills of exceptions cannot be added to or supplemented by the statements of counsel made at the argument before the law court. They must contain enough within themselves to show error, or they will be overruled. Allen v. Lawrence, 64 Me. 175.

Whole of bill as settled by justice must be brought to law court.—The justice who made the ruling and settled the bill of exceptions is the judge in the first instance of what the bill should contain or omit. If the excepting party is not satisfied with the justice's determination of that question, he should petition the law court to establish a proper bill of exceptions. If, instead, he brings to the law court the bill settled by the justice, he must bring the whole of it as so settled. He must comply with all its requirements to be entitled to a hearing. Atwood v. New England Tel. & Tel. Co., 106 Me. 539, 76 A. 949.

Error must be made to appear, it cannot be presumed. Allen v. Lawrence, 64 Me. 175.

The bill of exceptions must show what the issue was and how the excepting party was aggrieved. Heath, Appellant, 146 Me. 229, 79 A. (2d) 810; Sard v. Sard, 147 Me. 46, 83 A. (2d) 286.

All unnecessary prolixity should be avoided in bills of exceptions; but they must contain enough to show wherein the excepting party is aggrieved, or they cannot be sustained. Allen v. Lawrence, 64 Me. 175.

And bill should state evidence concerning the admission or exclusion of which complaint is made. — The excepting party must, on the face of the bill, show that he has been aggrieved, and this rule requires that the bill should state the evidence concerning the admission or exclusion of which complaint is made, and enough of the contentions or issues in the case to show that it was relevant or irrelevant, material or immaterial, competent or incompetent, as the case may be. Dennis v. Waterford Packing Co., 113 Me. 159, 93 A. 58.

And reference to evidence is not sufficient.—It is not an infrequent practice in framing a bill of exceptions to refer to the evidence and make it a part of the bill. This is not improper. The evidence may help to illuminate the exceptions. But neither this section nor approved practice contemplate that a reference in the bill to the body of the evidence, or the incorporation of the evidence as a part of the bill, is to take the place of a succinct and summary statement of the specific grounds of exception in the body of the bill itself. Dennis v. Waterford Packing Co., 113 Me. 159, 93 A. 58.

Thus bill must contain copy of answers to depositions objected to. — The question of the admissibility in evidence of certain answers in a deposition cannot be presented to the full court unless the bill of exceptions contains a copy of such answers. Webster v. Folsom, 58 Me. 230.

And a provision, in the bill of exceptions, that the depositions "may be referred to, but not copied," is not sufficient. Webster v. Folsom, 58 Me. 230.

But entire record should not be made part of bill. — The court on several occasions has expressed disapproval of the practice of making the entire record a part of bills of exceptions to rulings on the admission or exclusion of evidence. Johnson v. Bangor Ry. & Elec. Co., 125 Me. 88, 131 A. 1.

And it is not made part thereof unless so stated in bill.—The complete report of evidence taken in any case is not necessarily a part of a bill of exceptions unless the bill of exceptions states that it is a part. Bradford v. Davis, 143 Me. 124, 56 A. (2d) 68.

Bill held sufficient.—When a ruling complained of is on its face a ruling of law, as distinguished from a finding of fact or from a mixed finding of fact and ruling of law, a recital of the ruling and a statement of sufficient facts in the bill of exceptions to show that the exceptant is aggrieved thereby and that he excepts thereto is sufficient. Bryant v. Bryant, 149 Me. 276, 100 A. (2d) 663.

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

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

The evidence in support thereof, or in rebuttal or impeachment, shall be taken within such time and in such manner as the court or any justice thereof in vacation shall order, and shall be certified to the law court for determination. (R. S. c. 94, § 15.)

Section provides only authority for motion after final judgment. — There is no authority, either under the rules of court or the statutes of the state for a motion for a new trial after final judgment on a mandate from the law court in a criminal case save that afforded by this section. State v. Hume, 148 Me. 226, 91 A. (2d) 672.

Motion must allege or disclose newly discovered evidence. — A petition or motion cannot be considered a motion for a new trial on the ground of newly discovered evidence certified to the court under and by virtue of this section if the motion fails to allege or disclose any newly discovered evidence. State v. Hume, 148 Me. 226, 91 A. (2d) 672.

Not known before trial. — A motion for a new trial under this section is properly denied where the newly discovered evidence was known to the respondent before the trial, or could have been found by the exercise of reasonable diligence. State v. Casale, 148 Me. 312, 92 A. (2d) 718.

Sec. 16. Authority of court.—The superior court may administer all necessary oaths, render judgment and issue execution, punish for contempt and compel attendance; make all such rules and regulations, not repugnant to law, as may be necessary and proper for the administration of justice promptly and without delay; and the provisions of law relative to the jurisdiction of the supreme judicial court in each of said counties over parties, the arrest of persons, attachment of property, the time and mode of service of precepts, proceedings in court, the taxation of costs, the rendition of judgments, the issuing, service and return of executions and all other subjects apply to the superior court in all respects, except so far as they are modified by law, and the superior court is clothed with all the powers necessary for the performance of all its duties. (R. S. c. 94, § 16.)

See c. 166, § 19, re concurrent jurisdiction with probate court concerning custody and support of minors.

Sec. 17. Cases heard by presiding justice.—The justice presiding at a term of the superior court shall decide any cause without the aid of a jury, when the parties enter upon the docket an agreement authorizing it. (R. S. c. 94, § 17.)

The object of this section is to enable the parties to obtain the judgment of the judge upon the facts in addition to his rulings of the law. Merrill v. Merrill, 65 Me. 79.

Section designed to make decision of justice final. — The obvious intention of the legislature, was to make the adjudication of the presiding judge final and conclusive. This section confers on the presiding judge the power to determine all causes, when both parties agree and enter their agreement upon the docket, and he shall direct what judgment shall be entered up. No exceptions are given in terms and the whole language of the act shows none was intended. The design was to make his decision the end of all controversy, not that the losing party, after having agreed to submit to the decision of the judge, and that he should direct what judgment should be entered up, should be permitted indefinitely to renew litigation. The decision of the presiding judge in all matters of law or fact, submitted to his determination under this section, is final. Graffam v. Casco Bank & Trust Co., 137 Me. 148, 16 A. (2d) 106.

But the rulings of the justice are open to exceptions by an aggrieved party under § 14. Merrill v. Merrill, 65 Me. 79.

If right to except is reserved.—When a cause is tried by the presiding justice without the intervention of a jury, in accordance with the provisions of this section, exceptions to his rulings in matters of law do not lie, unless there has been an express reservation of the right to except. Frank v. Mallett, 92 Me. 77, 42 A. 238; Graffam v. Casco Bank & Trust Co., 137

Me. 148, 16 A. (2d) 106; Stern v. Fraser Paper, 138 Me. 98, 22 A. (2d) 129; Pennock v. Smith, 138 Me. 303, 25 A. (2d) 227.

If no leave to except to rulings of law by the trial justice is reserved, the presiding justice is made by the parties the sole judge of the weight and effect of the evidence and they must abide by his judgment. Espeargnette v. Merrill, 107 Me. 304, 78 A. 290.

The parties may agree that the presiding judge shall hear the cause, and upon hearing decide the facts, reserving by express stipulation the right to except to his ruling as to any question of law which may arise. Graffam v. Casco Bank & Trust Co., 137 Me. 148, 16 A. (2d) 106.

But findings of fact are conclusive.—In cases heard by a judge without intervention of a jury, by agreement, his findings of fact are conclusive. Madigan v. Lumbert, 136 Me. 178, 5 A. (2d) 278.

Findings of fact by a justice sitting without a jury so long as they find support in evidence are final. Graffam v. Casco Bank & Trust Co., 137 Me. 148, 16 A. (2d) 106.

When a trial by jury is waived and the the parties submit their cause to a single justice, the supreme judicial court has nothing to do with the facts as found. Its only duty is to determine whether the law has been rightly applied to those facts as found by the judicial referee. Madigan v. Lumbert, 136 Me. 178, 5 A. (2d) 278.

Unless made without evidence to support them.—Exceptions do not lie to the factual findings of a single justice unless they are made either without evidence to support them or in opposition to the only proper inferences to be drawn from the testimony. Pennock v. Smith, 138 Me. 303, 25 A. (2d) 227.

As is his judgment as to effect of evidence. — Under ordinary circumstances, the judgment of the presiding justice as to the effect of the evidence and his decision as to the matters of fact in issue, are also final and conclusive upon the parties. Frank v. Mallett, 92 Me. 77, 42 A. 238; Madigan v. Lumbert, 136 Me. 178, 5 A. (2d) 278.

It is no part of the judge's duty to report the evidence, for no appeal is given from his judgment as to the facts. He should therefore state the facts as he finds them proved, not the contradictory statements of opposing witnesses. He should merely find the facts, as in the case of a special verdict by a jury. To the facts as found by him it is his duty to apply the law. Montine v. Deake, 57 Me. 37.

Presumption that justice disregarded incompetent evidence.—In any case tried by the court without a jury, in difference from where the trial of an action at law is by jury, error in the admission of evidence is not a ground for reversal, if there is sufficient legal evidence to support the judgment, since it will be presumed, if nothing appears to the contrary, that the judge disregarded incompetent evidence. Edwards v. Goodall, 126 Me. 254, 137 A. 692.

Trial de novo follows if exceptions sustained. — When exceptions to the justice's rulings are sustained, then his finding of facts like a verdict is set aside, and a trial de novo follows, unless it otherwise expressly decided and stated in the rescript. Merrill v. Merrill, 65 Me. 79.

Applied in Landry v. Giguere, 128 Me. 382, 147 A. 816; Pride v. King, 133 Me. 378, 178 A. 716; York County Savings Bank v. Wentworth, 136 Me. 330, 9 A. (2d) 265; Franklin Paint Co. v. Flaherty, 139 Me. 330, 29 A. (2d) 651; United Feldspar & Minerals Corp. v. Bumpus, 141 Me. 7, 38 A. (2d) 164; O'Connor v. Wassookeag Preparatory School, 142 Me. 86, 46 A. (2d) 861.

Sec. 18. Affidavit in abatement. — Any affidavit required by rule of court, to pleas or motions in abatement, may be made at any time before entry of the action or before filing the same. (R. S. c. 94, § 18.)

Applied in Atwood v. Higgins, 76 Me. 423.

Sec. 19. Trial to proceed when dilatory pleas overruled. — When a dilatory plea is overruled and exceptions taken, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to the provisions of section 14. (R. S. c. 94, § 19.)

This section applies not only to civil but to criminal cases. State v. Rogers, 149 Me. 32, 98 A. (2d) 655.

Test for determining if plea dilatory.—The test determining whether a ruling on a pleading may be brought to this court immediately or should await the close of the trial, i. e. whether the pleading is dilatory in nature, hinges on the issue whether it is "adverse to the proceeding." Hashey

v. Bangor Roofing & Sheet Metal Co., 142 Me. 405, 50 A. (2d) 916; Bartlett v. Chisholm, 147 Me. 265, 86 A. (2d) 166.

This section contemplates trial upon the merits after exceptions are taken to the overruling of dilatory pleas. Stowell v. Hooper, 121 Me. 152, 116 A. 256.

A question raised in the nature of abatement to an action at law, if decided at nisi prius adversely to the defendant, is never considered by the law court before the trial is had. Maine Benefit Ass'n v. Hamilton, 80 Me. 99, 13 A. 134.

Overruling a dilatory plea does not end the suit, but keeps it in court for further proceedings. In such case, the exceptions should await the final disposition of the case. The court should proceed and close the case. Day v. Chandler, 65 Me. 366.

When defendant's dilatory motion to dismiss is overruled, he has the right to answer over on the merits and, unless he refuses to do so or waives his right so to do, the case should proceed to trial and be concluded on its merits. Augusta Trust Co. v. Glidden, 133 Me. 241, 175 A. 912.

The mandate of the statute is clear that allegations of error as to the disposal of pleadings of a dilatory nature are not determinable in the supreme judicial court until after the close of the trials to which they relate. Hashey v. Bangor Roofing & Sheet Metal Co., 142 Me. 405, 50 A. (2d) 916; Bartlett v. Chisholm, 147 Me. 265, 86 A. (2d) 166.

And defendant has right to answer over.—From the provisions of this section, it appears that on the overruling of a plea in abatement or other dilatory plea a defendant has the right to answer over on the merits if he so desires. On doing so he may proceed to trial and at the close bring forward to the law court his exceptions to the overruling of the plea. Estabrook v. Ford Motor Co., 136 Me. 367, 10 A. (2d) 715.

On the overruling of his motion in abatement, the defendant has the right to answer over. On his failure to do so it was the duty of the court to enter a default and to proceed and close the case by assessing the damages. Not until then could the cause be properly certified to the law court. Jordan v. McKay, 132 Me. 55, 165 A. 902.

Pleas of former jeopardy being of the nature of dilatory pleas, the case should go to final judgment after such plea before being brought to the supreme judicial court on exceptions. State v. Cohen, 125 Me. 457, 134 A. 627.

But a motion to dismiss a complaint for the assessment of damages is not to be regarded as a dilatory plea within the meaning of this section. It serves, rather, the purpose of a demurrer. Hurley v. South Thomaston, 101 Me. 538, 64 A. 1050.

Sustaining a demurrer to a dilatory motion to dismiss a writ, in effect overrules it. Augusta Trust Co. v. Glidden, 133 Me. 241, 175 A. 912.

Thus case presented to law court after such demurrer sustained and before trial on merits should be dismissed.—An exception taken to a ruling, whereby a demurrer is sustained overruling a dilatory motion to dismiss an action, should await conclusion of trial of the case on its merits, and if, before then, it is presented to the law court, should be dismissed as prematurely brought up. Augusta Trust Co. v. Glidden, 133 Me. 241, 175 A. 912.

As should exception to ruling on motion for new service presented before conclusion of trial.—An exception to a ruling on a preliminary motion for an order of new service being dilatory in its nature, unless the ruling is adverse to the proceedings, is prematurely before the law court, if presented before the conclusion of the trial of the case on its merits, and hence should be dismissed. Augusta Trust Co. v. Glidden, 133 Me. 241, 175 A. 912.

Cases not to be entered in law court until they are in condition to be finally disposed of.—The law provides that when a dilatory plea is overruled, (and all pleas are dilatory which, if overruled, are followed by no other than a judgment to answer further), and exceptions are taken, the court shall proceed and close the trial, and that the action shall then be continued and marked law, and not before. Cases should not therefore be entered in the law court on exceptions until they are in a condition to be finally disposed of, if the exceptions are overruled. State v. Inness, 53 Me. 536.

The defendants pleaded in abatement the nonjoinder of co-defendants. The plaintiff demurred, and to the sustaining of the demurrer the defendants had exception, and, before availing themselves of their right to plead over to the merits, have brought their exception here with the agreement that if their exception be overruled they may plead anew below. The exception is prematurely brought up. It is to an interlocutory order, and must await the final determination of the suit. Pleas in abatement are collateral to the merits of the case, and the sustaining of a demurrer to them never ends the case, but rather orders a plea to the merits. If,

however, the demurrer be overruled and the plea sustained the action abates and exceptions may be brought up, for the case is ended. Copeland v. Hewett, 93 Me. 554, 45 A. 824.

Exceptions to interlocutory orders and rulings, while they must be filed at the term when the proceedings complained of are had, should remain in the court where the action is pending, until it is ready for final disposition, and come to the law court, if at all, at the same time with other exceptions raised at the trial, if any, or when the case is in such a position that an adjudication upon them is necessary for a final determination of the rights of the parties. Otherwise they are liable to be regarded as prematurely presented, and to be dismissed. Cameron v. Tyler, 71 Me. 27.

And defendant prematurely entering case waives right to further answer.—Where the defendant pleads specially a former conviction, the government demurs, the presiding judge sustains the demurrer and the defendant excepts, if the defendant desires to answer further he should claim the right then, or, according to some authorities, he should obtain leave to plead double at the beginning. If he does neither, but enters his action in the law court, which he cannot rightfully do unless it is in a condition to be finally disposed of, if his exceptions are overruled, his right, if any, to answer further, must be regarded as waived. State v. Inness, 53 Me. 536; Fleming v. Courtenay, 95 Me. 128, 49 A. 611; State v. Jellison, 104 Me. 281, 71 A. 716.

The defendant alleged exceptions without asking leave to plead anew, and entered his action in the law court. This has been considered a waiver of any right on his part to answer further; and the judgment must therefore be final against him. Furbish v. Robertson, 67 Me. 35.

Exceptions to the overruling of a plea in abatement, a dilatory plea, regularly should not be brought up until after trial upon the merits. But if the party does not choose to accept the privilege of pleading over what is accorded him, he thereby waives all such right and the decision in the supreme court must be final. Smith v. Hunt, 91 Me. 572, 40 A. 698.

Applied in Cole v. Cole, 112 Me. 315, 92 A. 174; Gilbert v. Cushman, 113 Me. 525, 95 A. 201; State v. Beaudette, 122 Me. 44, 118 A. 719; Gilbert v. Dodge, 130 Me. 417, 156 A. 891; Klopot v. Scuik, 131 Me. 499, 162 A. 782.

Cited in Rockland Savings Bank v. Alden, 104 Me. 416, 72 A. 159; Tripp v. Park Street Motor Corp., 122 Me. 59, 118 A. 793.

Sec. 20. Interest on verdicts and awards. — Interest shall be allowed on verdicts and amounts reported by referees to be due, from the time of finding such verdicts or making such reports to the time of judgment. (R. S. c. 94, § 20.)

This section is imperative in requiring that interest shall be allowed. Hervey v. Bangs, 53 Me. 514.

And party has right to interest unless forfeited. — The evident intention of this section was to confer a right to receive interest on a verdict between the time of finding and the time of judgment. The party has a right to have that power exercised and to recover such interest, unless he has forfeited that right by his own misconduct. Forbes v. Bethel, 28 Me. 204.

And interest allowed on reports of referees.—Whatever might have been the law formerly, interest is now to be allowed upon the reports of referees, after their acceptance, by the special provisions of this section. Cary v. Whitney, 50 Me. 337.

For a case under this section when it contained no provision for allowing interest upon reports of referees, see Kendall v. Lewiston Water Power Co., 36 Me. 19.

Cited in Smith v. Dillingham, 33 Me. 384.

Naturalization and Citizenship.

Sec. 21. Jurisdiction of applications for naturalization. — The superior court shall have jurisdiction of applications for naturalization. No other court established by this state shall entertain any primary or final declaration or application made by or in behalf of an alien to become a citizen of the United States or entertain jurisdiction of the naturalization of aliens. (R. S. c. 94, § 21.)

Section constitutional. — See Gilroy, Petitioner, 88 Me. 199, 33 A. 979.

Sec. 22. Jurisdiction of petitions for judicial declaration of citizenship.—The superior court shall have jurisdiction to hear and determine petitions of persons alleging themselves to be citizens, resident and domiciled inhabitants of this state and praying a judicial declaration of such citizenship, residence and domicile. Such petitions shall set forth the grounds upon which the application is based, shall be supported by such evidence as the court shall deem necessary and shall be filed, heard and determined in the county in which the petitioner claims residence. If such petitioner desires a jury trial upon his petition, he may indorse a request therefor upon the petition at the time of entry and shall thereupon be entitled to the same. (R. S. c. 94, § 22.)

Sec. 23. Notice to attorney general.—Notice of said petition shall be given to the attorney general by causing an attested copy of the same to be served upon him by an officer qualified to serve civil process, at least 14 days prior to the 1st day of the term of court at which said petition is entered and the attorney general may appear and be heard thereon. (R. S. c. 94, § 23.)

Sec. 24. Change of residence.—In the event of a subsequent change of residence on the part of any person so declared to be a citizen of this state, said court shall also have jurisdiction and authority upon petition therefor and like proceedings had to make a judicial declaration of such change of residence, and decree that the former judgment entered in such case shall thereafter be of no force and effect. (R. S. c. 94, § 24.)