

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

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each of whom shall within 3 months after the effective date of sections 25 to 29, inclusive, prepare in writing, certify and mail to the office of the secretary of state, a full, true and complete list of all members of the bar now living who have been admitted in their respective counties. (1955, c. 446.)

Sec. 27. Revision.—It shall likewise be the duty of the clerk of court in each of the several counties to furnish to the secretary of state by registered mail a written certificate setting forth any and all additions to the aforesaid list of members of the bar from his county as well as all deletions by reason of death, resignation, disbarment, suspension or otherwise, and all reinstatements or readmissions not otherwise reported to the secretary of state as and when they occur and thereupon it shall become the duty of the secretary of state, forthwith upon receipt of each amendatory certificate, to revise the central register of attorneys accordingly, to the end that said register may be perpetually maintained with current corrections from each county. A list of persons admitted each year together with the date and place of taking the oath and the date of admission shall be supplied annually to the secretary of the board of bar examiners by the secretary of state. (1955, c. 446.)

Sec. 28. Register as evidence.—If and whenever in any proceeding before any court of civil or criminal jurisdiction within the state of Maine, it becomes an issue as to whether or not any individual is or is not duly admitted to practice law as a member of the bar in the state of Maine, the certificate of the secretary of state as to whether or not his name then appears upon the said central roll or register of attorneys shall be prima facie evidence of the fact. (1955, c. 446.)

Sec. 29. Certificates.—It shall be the duty of the secretary of state upon payment of a fee of \$5 to furnish his certificate in respect of any individual as to whether he is or is not recorded as a member of the bar on the said central register except that such certificate shall be furnished without charge to the attorney general, his deputies and assistants and the county attorneys of the several counties for use in connection with their public duties. (1955, c. 446.)

Chapter 106.

Superior Court.

Superior Court; Constitution, General Jurisdiction and Powers.

Sec. 2. Salary; expenses.—Each of the justices of the superior court shall receive an annual salary of \$12,500. 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. 1955, c. 472, § 2. 1957, c. 417, § 2.)

Effect of amendments. — The 1955 amendment increased the annual salary of justices of the superior court from \$10,500 to \$11,500.

The 1957 amendment increased the salary of the justices from \$11,500 to \$12,500, and carried appropriations for the fiscal years ending in 1958 and 1959.

Sec. 11. Trial terms.

III. Cumberland: At Portland on the 1st Tuesday of every month except July and August; but the criminal business of said county, except as herein-after provided, shall be transacted at the terms held on the first Tuesdays of January, May and September, together with civil business. After its final adjournment for civil business, any January, May or September term of said

court may be kept open for criminal business for such time as the presiding justice may deem expedient, provided it shall be finally adjourned at least 7 days before the convening of the next of whichever January, May or September term ensues chronologically after such final adjournment; and all business having to do with criminal appeal cases and pending indictments may be transacted at Portland at any term begun on the first Tuesday of any month except July and August. Criminal appeal cases from municipal courts and trial justice courts in Cumberland County when appealed or appealed and bailed shall be appealed or appealed and bailed to the very next succeeding, convening term of Cumberland County superior court at Portland. (1955, c. 285. 1957, c. 113)

VII. Knox: At Rockland on the 2nd Tuesday of February and the 1st Tuesdays of May and October. (1955, c. 203)

IX. Oxford: At Rumford on the 1st Tuesday of February, and at Paris on the 1st Tuesday of October and on the 2nd Tuesday of May. (1955, c. 203)

XVI. York: At Alfred on the 1st Tuesdays of January, May, September and November. [1955, c. 220] (R. S. c. 94, § 11. 1945, c. 1. 1949, c. 126. 1951, c. 266, § 112. 1953, c. 166; c. 181, § 1. 1955, cc. 203, 220, 285. 1957, c. 113.)

Effect of amendments.—The first 1955 amendment, effective January 1, 1956, substituted "October" for "November" in subsection VII. It also substituted "February" for "March," "May" for "June" and "October" for "November" in subsection IX. The second 1955 amendment, effective January 1, 1956, changed subsection XVI by substituting "1st Tuesdays of January, May, September and November" for "2nd Tuesday of January and 1st Tuesdays of May and October." The third 1955 amendment, effective on its approval, April 25, 1955, added provisions as to

criminal appeal cases and pending indictments in subsection III. The 1957 amendment rewrote subsection III.

Only the subsections changed by the amendments are set out.

Criminal business in Cumberland county.—For case decided prior to the 1957 amendment to subsection III, see *State v. Hoar*, 152 Me. 139, 125 A. (2d) 918, involving the question of terms at which criminal business arising from appeals and pending indictments might be transacted in the superior court in Cumberland county.

Sec. 14. Exceptions, in civil and criminal cases; proceedings, if deemed frivolous; motions for new trial.

I. GENERAL CONSIDERATION.

Applied in *State v. Johnson*, 150 Me. 172, 107 A. (2d) 537.

III. WHAT RULINGS SUBJECT TO EXCEPTIONS.

A. In General.

Nor do exceptions lie to the exercise of the judge's discretionary power.

When the determination of any question rests in the judicial discretion of the trial court, the exercise of that discretion cannot be reviewed by an appellate court unless it is made to appear that the decision was clearly wrong or that it was

based upon some error in law. *Young v. Carignan*, 152 Me. 332, 129 A. (2d) 216.

V. SUFFICIENCY OF EXCEPTIONS.

Bill must stand alone.

The bill must be strong enough to stand alone. The court, in considering the exceptions, cannot travel outside of the bill itself. *Bradford v. Davis*, 150 Me. 420, 114 A. (2d) 244, quoting *Jones v. Jones*, 101 Me. 447, 64 A. 815.

A bill of exceptions which does not include the material required by the docket entry is not complete, and therefore, under Maine practice cannot be considered. *Bradford v. Davis*, 150 Me. 420, 114 A. (2d) 244.

Sec. 15. Motions for new trial on ground of newly discovered evidence.

Applied in *State v. Papalos*, 150 Me. 370, 113 A. (2d) 624.

Cited in *Harrison v. Wells*, 151 Me. 75, 116 A. (2d) 134.

Sec. 17. Cases heard by presiding justice.

If right to except is reserved.

In accord with 1st paragraph in original.

See *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

The reservation of the right to except should be on the docket. *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

But judge's certification that exceptions are allowed is conclusive.—If there has been no express reservation and a bill of exceptions is presented to the justice for his signature and the justice is prepared to sign, the opposing party may object to the allowance, and call attention to the docket omission. If the judge, however, signs the

bill of exceptions, the certification that exceptions are allowed is conclusive, provided there is nothing in the bill of exceptions itself or in the certificate of the judge to show the contrary. *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

The law court has no jurisdiction of a motion for a new trial where a case is heard by the single justice. *Ouelette v. Pageau*, 150 Me. 159, 107 A. (2d) 500.

Sec. 19. Trial to proceed when dilatory pleas overruled.

And defendant prematurely entering case, etc.

In accord with 2nd paragraph in orig-

inal. See *State v. Melanson*, 152 Me. 168, 126 A. (2d) 278.

Sec. 20. Interest on verdicts and awards.

Applied in *Norridgewock v. Hebron*, 152 Me. 280, 128 A. (2d) 215.

Chapter 107.

Concurrent Jurisdiction of Supreme and Superior Courts.

Equity.

Sec. 4. Equity powers.

X.

III. TRUSTS.

Court may entertain bill seeking construction of trust indenture.—Under equity practice and the specific provisions of this subsection the supreme judicial court has authority to pass upon the questions raised by the presentation of a bill in equity seeking the construction and interpretation of the provisions of a trust

indenture. *Fiduciary Trust Co. v. Brown*, 152 Me. 360, 131 A. (2d) 191, quoting *Porter v. Porter*, 138 Me. 1, 20 A. (2d) 465.

But court will not act until necessity arises.

In accord with original. See *Fiduciary Trust Co. v. Brown*, 152 Me. 360, 131 A. (2d) 191.

XIII.

Subsection XIII held applicable.—The "10 taxable inhabitants" statute is applicable where a school district and its officers have taken action to pledge their credit for obligations already incurred and will in ordinary course attempt to pay out moneys. The equity statute is designed to afford protection against improper ex-

penditures in such a case. *Knapp v. Swift River Valley Community School Dist.*, 152 Me. 350, 129 A. (2d) 790.

Subsection XIII applied, in *Carlisle v. Bangor Recreation Center*, 150 Me. 33, 103 A. (2d) 339; *Crommett v. Portland*, 150 Me. 217, 107 A. (2d) 841.

Sec. 10. Causes in equity, return of subpoena and service.

Within 10 days after the service of a bill of complaint or other application in equity, the defendant, prior to the filing of his answer thereto, may make application to the chief justice of the supreme judicial court for the assignment of a justice to preside on the matter other than the justice to whom the original complaint or application was presented; upon the receipt of such application the chief justice may assign another justice to hear the matter. After such assignment, all petitions and motions relating thereto shall be presented to, and all matters relating to said cause shall be considered by, said justice in the manner prescribed by law for equity matters (R. S. c. 95, § 10, 1953, c. 368, 1955, c. 392, § 2.)

Effect of amendment.—The 1955 amendment substituted the words "make application" for the words "petition in writing

for good cause shown" near the beginning of the second paragraph and the word "application" for the word "petition" near