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Chapter 111.

Miscellaneous Provisions Relating to Courts and Public Officers.

Title to Real Estate.

Sec. 1. When title to real estate is in question. — In actions in a municipal court or before a trial justice when it appears by the pleadings or brief statement that the title to real estate is in question, the cause shall on request of either party be removed to the superior court in the county; and such party shall recognize to the other in a reasonable sum, with sufficient sureties, to enter the case at the next term thereof; and if he does not so recognize, the trial justice or municipal court judge shall hear and decide the case as if such request had not been made. (R. S. c. 98, § 1. 1949, c. 349, § 126.)

When title not in question.—The title to real estate cannot be considered as concerned or brought in question, within the meaning of this section, when it is not put in issue by the pleadings or brief statement, and cannot be affected by the judgment. Hatch v. Allen, 27 Me. 85.

Former provision of section.—For a case relating to a former provision of this section absolutely depriving the justice of jurisdiction when title to real estate is in question, see Low v. Ross, 3 Me. 256; Hodgdon v. Foster, 9 Me. 113.

Sec. 2. Copy and papers produced at appellate court; proceedings if not entered.—The party so recognizing shall produce at said court a copy of the record and all such papers as are required to be produced by an appellant; and if he fails to do so or to enter the action as before provided, he shall on complaint of the adverse party be nonsuited or defaulted, as the case may be; and such judgment shall be rendered as law and justice require. (R. S. c. 98, § 2.)

Sec. 3. If plaintiff does not prevail, costs for defendant.—If the plaintiff fails to enter and prosecute his action or if, on trial, he does not maintain his action, the defendant recovers judgment for his costs to be taxed by the justice; and execution shall issue therefor. (R. S. c. 98, § 3.)

Appeals.

Sec. 4. Appeal.—Any party aggrieved by the judgment of the judge or the trial justice, whether after trial or upon default, may appeal to the next superior court in the same county and may enter such appeal at any time within 5 days after the judgment, Sunday not included. The appellant shall within 5 days after judgment, Sunday not included, pay to the clerk the required fees for such appeal, including the entry fee in and cost of forwarding such appeal to the appellate court, and in that case no execution shall issue, and the clerk shall enter the appeal in the appellate court where it shall be determined as a new entry. (R. S. c. 98, § 4. 1949, c. 349, § 127.)

Upon appeal after final decision cause tried anew.—After a final decision is had of the cause before the justice, the appeal will remove the whole case to the next superior court, and the same questions may there be raised as had been raised before the justice. Waterville v. Howard, 30 Me. 103.

An appeal can be taken in all cases where the judgment of the justice is a final decision of the action, and not merely interlocutory. Waterville v. Howard, 30 Me. 103.

As on judgment of abatement. — If the judgment of the justice is that the action should abate, the plaintiff may appeal, be-

cause that would be a final determination of the action. Waterville v. Howard, 30 Me. 103.

But not on judgment of respondeat ouster.—The legislature did not intend by this section to allow an appeal from the decision of a justice upon a judgment of respondeat ouster. For if an appeal should be allowed from such a judgment it would be in the power of the defendant in all cases to withdraw from the justice a trial on the merits of the action. Waterville v. Howard, 30 Me. 103.

To enter the appeal under this section means to claim it or to notify the clerk that an appeal is desired. Wyman v. Newland, 105 Me. 260, 74 A. 195.

But allowance of appeal is judicial act.—The entry of an appeal does not include its allowance. The allowance of the appeal is a judicial act which may be done after the acts required to be taken by the appellant are completed, at any time prior to the return term of the appellate court. Wyman v. Newland, 105 Me. 260, 74 A. 195.

For a case under this section, before the enactment of § 5, holding that a party who expressly consents to judgment cannot thereby be "aggrieved," and therefore is not entitled to appeal, see Thompson v. Perkins, 57 Me. 290.

Applied in Putnam v. Oliver, 28 Me. 442.

Cited in State v. Suhur, 33 Me. 539; State v. Wheeler, 64 Me. 532; Stevens v. Manson, 87 Me. 436, 32 A. 1002.

Sec. 5. Appeal without trial.—In actions in a municipal court or before a trial justice, either party, after appearing and filing his pleadings, may waive a trial and give the adverse party judgment, and then appeal as if there had been an actual trial. (R. S. c. 98, § 5.)

See note to c. 110, § 11, re pleadings.

Sec. 6. Appellant's recognizance.—If so requested by the adverse party, the appellant shall within 1 week after notice of such request, or within such further time as may be allowed by the court, recognize to such adverse party in a reasonable sum, with condition to prosecute his appeal with effect and pay all costs arising after the appeal. (R. S. c. 98, § 6.)

Recognizance requiring personal appearance and payment of intervening damages not authorized.—A recognizance in a civil case under this section requiring the personal appearance of the appellant in the appellate court, and the payment of all intervening damages is not authorized; it is unenforceable, and the appeal on such recognizance is not perfected. French v. Snell, 37 Me. 100; Lane v. Crosby, 42 Me. 327; Jordan v. McKenney, 45 Me. 306.

This section requires the party appealing to recognize, with no other condition except "to prosecute his appeal with effect, and pay all costs arising after the appeal." A recognizance in a civil case under this section, requiring the personal appearance of the appellant before the appellate court, is unauthorized, since the prosecution of such appeal does not necessarily require such appearance. The cause could proceed to trial without it. State v. Baker, 50 Me. 45.

If the adverse party does not require the recognizance provided in this section, it need not be made. Colby v. Sawyer, 76 Me. 545; Wyman v. Newland, 105 Me. 260, 74 A. 195.

And it cannot be made on Sunday.—The taking of the recognizance is purely a matter of contract to prosecute the appeal. Such a contract, made on Sunday is not valid. State v. Suhur, 33 Me. 539.

Former provision of section.—For cases relating to a former provision of this section providing for recognizance with sureties, see State v. Baker, 50 Me. 45; Colby v. Sawyer, 76 Me. 545.

Sec. 7. On appeal copies and papers produced.—When such appeal is completed, the clerk shall file in the appellate court the originals of all depositions and other written evidence or documents and a copy of the record and all papers filed in the cause. (R. S. c. 98, § 7.)

The record produced on appeal is not liable to be explained or contradicted by parol testimony, or extraneous documents. A copy of the record regularly authenticated is the legal and best evidence of it. Holden v. Barrows, 39 Me. 135.

A copy of the recognizance is not admissible to contradict an original record, nor to show it defective or informal. Stetson v. Corinna, 44 Me. 29.

Recognizance must be returned to court of appeal.—The recognizance taken before the magistrate on an appeal under § 6 must be returned to the court to which the

appeal is taken. It is there entered of record, and becomes the basis of further proceedings therein. Stetson v. Corinna, 44 Me. 29.

But not a copy thereof.—A copy of the recognizance should not be returned to the appellate court, nor can it be entered of record there. Stetson v. Corinna, 44 Me. 29.

And it may be received after motion to dismiss, by leave of court.—Where no recognizance is returned when the appeal is entered, it may be received and entered of record by leave of court, after a motion to dismiss for that cause. Stetson v. Corinna, 44 Me. 29.

Original writ not presented.—In an appeal from the judgment of a justice the original writ is not presented. It remains with the justice. Holden v. Barrows, 39 Me. 135.

Sec. 8. Executions directed into other counties.—When a debtor removes or is out of the county in which judgment is rendered against him by a trial justice or municipal court, such justice or court may issue execution against him, directed to the proper officers in the county where he is supposed to be; and it has the same force as if issued by a justice or court of the latter county. (R. S. c. 98, § 8.)

Sec. 9. Writs of scire facias and executions, when directed into other counties.—In cases of scire facias against bail, indorsers of writs, executors or administrators, and in all trustee processes or original writs against two or more defendants before a trial justice or a judge of a municipal court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where such defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him. (R. S. c. 98, § 9.)

Trial Justices and Judges of Municipal Courts, Ex Officio, Justices of the Peace.

Sec. 10. Ex officio, justices of the peace; may administer oaths.—Trial justices and judges of municipal courts are, ex officio, justices of the peace and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices and judges of municipal courts, are of equal effect. Judges of municipal courts, trial justices and justices of the peace may administer all oaths required by law, unless another officer is specially required to do it. (R. S. c. 98, § 10.)

Applied in McFadden v. Bubier, 66 Me. 270.

Fees of Public Officers.

Sec. 11. Number of words to a written page.—Two hundred and forty words constitute a written "page", if the writing contains that number, and, where no other rule is provided, public officers shall be allowed for copies which they are required by law to furnish, 12¢ a page; for affixing an official seal to the same, when necessary, 25¢ more. (R. S. c. 98, § 11.)

Sec. 12. Fees not provided for.—In cases not expressly provided for, the fees of all public officers for any official service shall be at the same rate as are prescribed by law for like services. (R. S. c. 14, § 33.)

Sec. 13. Account of items in writing may be required.—Every officer or other person upon receiving any fees provided for by law, if required by the person paying them, shall make a particular account thereof in writing specifying for what they accrued or he forfeits to such person treble the sum paid, to be recovered in an action of debt. (R. S. c. 14, § 34.)