

MAINE STATE LEGISLATURE

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CHAPTER 607

MANDAMUS

Sec.

5451. Petition; questions of law reserved; issue and return.
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§ 5451. Petition; questions of law reserved; issue and return

A petition for a writ of mandamus may be presented to a Justice of the Supreme Judicial Court or of the Superior Court in any county, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon appeal or otherwise, for the determination of the law court, which may hear and determine the same as provided; but in all cases where objections are made to any rulings, findings or decrees made upon such petition, the case shall be proceeded with as if no objections are made, until a decision shall be had and the peremptory writ shall have been ordered or denied, so that an affirmance on appeal would finally dispose of the case, which shall then be certified to the Chief Justice of the Supreme Judicial Court as provided in section 5452. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.

R.S.1954, c. 129, § 17; 1959, c. 317, § 282.

§ 5452. Return and answer; judgment and peremptory writ; costs; false return

When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer deny any material facts contained in such return or may move to dismiss for insufficiency in law. If the party suing the writ maintains the issue on his part, his damages shall be assessed and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus. After judgment and decree

that the peremptory writ be granted or denied, the justice of the court before which the proceedings are pending shall forthwith certify to the Chief Justice for decision any appeal based on objections to any rulings, findings or decrees made at any stage of the proceedings. Notice of such appeal shall be given within 5 days after judgment and decree. The appealing party shall, within 15 days thereafter, forward to the Chief Justice his written argument upon such appeal and shall, within said 15 days, furnish the adverse party or his attorney with a copy of such argument. The adverse party shall, within 15 days after receipt of such copy, forward to the Chief Justice his written argument in reply. Thereupon the justices of said court shall consider said cause immediately and decide thereon and transmit their decision to the clerk of the court where the petition is pending, and final judgment shall be entered accordingly. If the judgment is in favor of the petitioner, the peremptory writ of mandamus shall thereupon be issued.

R.S.1954, c. 129, § 18; 1959, c. 317, § 283.

§ 5453. Citation of 3rd person to show cause

The court may make rules on a petition for the writ or upon and after the issuing of the first writ, calling upon any person having or claiming a right or interest in the subject matter, other than the party to whom the writ is prayed to be or has been directed, to show cause against the issuing thereof. If such person appears, he shall be heard in such manner as the court may direct, and in proper cases he may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

R.S.1954, c. 129, § 19.

§ 5454. No abatement on death, resignation or removal

If such 3rd person is admitted, the proceedings shall not abate or be discontinued by the death, resignation or removal from office by lapse of time or otherwise of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

R.S.1954, c. 129, § 20.