

HOUSE No. 2751

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 28, 1955.

The committee on the Judiciary, to whom was referred so much of the annual report of the Judicial Council (Pub. Doc. No. 144) as relates to oral depositions before trial in the Superior Court (pages 12-14), report the accompanying bill (House, No. 2751).

For the committee,

EDMOND J. DONLAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT PROVIDING FOR LIMITED ORAL DISCOVERY BY DEPOSITION BEFORE TRIAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 231 of the General Laws is hereby amended
2 by inserting after section 68 the following section: —
3 *Section 68A.* (1) Any party in the superior court,
4 after the entry of a writ or the filing of a bill or petition,
5 may examine orally any other party, in the city or town
6 within the commonwealth of the residence or usual place
7 of business of the party to be examined, for the discov-
8 ery of facts and documents admissible in evidence at the
9 trial of the case. The word “party” in this act shall be
10 deemed to include parties intervening or otherwise ad-
11 mitted after the beginning of a suit. Such examination
12 may be used at the trial by the party taking the same,
13 or by any other party on paying the cost of taking the
14 same, unless the party examined is present at the trial
15 of the case. Nothing herein shall be held to prevent the
16 use of such examination as a declaration or admission of
17 a party, if material, whether or not the party examined
18 is present at the trial, or the use of such examination in
19 connection with cross-examination of such party. Sec-
20 tions sixty-five, sixty-six and sixty-seven shall apply to
21 this section.

22 (2) In order to make such examination any party
23 may apply to a justice of the peace or notary public,
24 who shall issue a notice to the party to be examined and
25 all other parties to appear before said justice or notary
26 at the time and place appointed for such examination.
27 An attested copy of such notice shall be sent by regis-

28 tered mail to the party to be examined and to all attor-
29 neys of record of said party and of all other parties, not
30 less than ten days before the date set for the examination
31 so that they may attend.

32 (3) The party examined shall be sworn or affirmed,
33 and his examination shall be taken in the same manner
34 and subject to the same rules as if taken before a court.
35 The court shall at all times have full control of the
36 examination and may impose reasonable conditions as
37 to its conduct and scope.

38 (4) The party requesting the examination shall be
39 allowed first to examine on all points material to the
40 cause in which the examination is made. The party
41 examined or his attorney may then examine in like man-
42 ner, after which any party may examine further.

43 (5) The examination shall be taken by a stenographer
44 appointed by the justice or notary on the request of
45 either party at his expense. Said stenographer shall be
46 sworn by the justice or notary to transcribe faithfully
47 the testimony, and his transcript shall be certified by the
48 justice or notary. In case such request is not made the
49 deposition shall be written by the justice, notary or
50 commissioner or by a disinterested person, in the pres-
51 ence and under the direction of the justice, notary or
52 commissioner. The examination or the stenographer's
53 transcript thereof shall be carefully read to or by the
54 party examined and then subscribed by him.

55 (6) The examination shall be delivered by the justice,
56 notary or commissioner to the court, before which the
57 cause is pending, or shall be enclosed and sealed by him
58 and directed to it, and shall remain sealed until opened
59 by it. Copies of the deposition, however, may be fur-
60 nished by the justice, notary or commissioner to any
61 party.

62 (7) Nothing in this act contained shall prevent either
63 party calling and examining verbally at the trial of the
64 action any party in the same manner as though his testi-
65 mony had not been taken in writing.

66 (8) If a party after due notice fails without reasonable

67 cause to attend and submit himself to examination under
68 this act, the court may make and enter such order, judg-
69 ment or decree as justice requires.

70 (9) No one without leave of court shall both examine
71 any other party orally under this act and interrogate
72 him in writing under sections sixty-one to sixty-seven,
73 inclusive, and no party shall be required to attend and
74 submit himself to examination more than once in the
75 same case except by order of court.

76 (10) A party in the superior court may examine orally
77 an agent, servant or employee of an adverse party in
78 the same manner and under the same conditions as pro-
79 vided for the examination of a party in the foregoing
80 subsection. The examination of no more than one such
81 agent, servant or employee may be taken in any case
82 except by order of court. A person subject to examina-
83 tion under this subsection may be summoned and com-
84 pelled to testify in like manner and under the same
85 penalties as are provided for a witness before the court.