

SENATE No. 918

The Commonwealth of Massachusetts

SENATE, June 12, 1964.

The committee on the Judiciary, to whom was recommitted the Senate Bill to extend discovery in the Superior Court (Senate, No. 800), reports recommending that the same ought to pass, with an amendment substituting a new draft entitled "An Act relative to oral depositions and discovery in the Superior Court." (Senate, No. 918), (Senator Hennigan and Representatives D'Avolio of Boston, Travaline of Somerville, Carney of Boston, Davenport of Boston and Sacco of Medford dissenting).

For the committee,

A. FRANK FOSTER.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Four.

AN ACT RELATIVE TO ORAL DEPOSITIONS AND DISCOVERY IN THE SUPERIOR COURT.

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

1 SECTION 1. Chaptr 233 of the General Laws is hereby
2 amended by inserting after section 40 the following section: —
3 *Section 40A.* For the purpose of discovery or for use as
4 evidence or for both purposes, in any civil cause or proceeding
5 pending in the superior court, and subject to rules promul-
6 gated by the justices of the superior court, any party may
7 take the testimony of any person, including a party, by dep-
8 osition upon oral examination, and a justice of the superior
9 court may, upon motion of any party showing good cause,
10 order any other party (a) to produce and permit inspection
11 and copying of documents and other tangible things not
12 privileged and (b) to permit entry upon designated land or
13 other property for the purpose of inspecting, measuring or
14 photographing such land or property or any object or opera-
15 tion thereon.

16 Unless the court for good cause shown otherwise orders,
17 the moving party shall provide one copy of such deposition
18 to opposing counsel and all stenographic expense shall be
19 borne by the moving party. Neither such expense nor witness
20 fees in connection with depositions, shall be allowed as tax-
21 able costs. Depositions under this section shall be taken in
22 the county in which the deponent lives or has his usual place
23 of business, and shall not be taken later than six months after
24 the return day without special permission of the court.

25 Unless the court for good cause shown otherwise orders,
26 no deposition shall be taken under this section in any cause
27 or proceeding which has been referred to an auditor under

28 the provisions of section fifty-six of chapter two hundred and
29 twenty-one or transferred to another court under section one
30 hundred and two C of chapter two hundred and thirty-one,
31 nor shall any cause or proceeding be so referred or transferred
32 in which a deposition has been so taken. No deposition shall
33 be taken under this section of a party who has been interro-
34 gated under section sixty-one of chapter two hundred and
35 twenty-one, nor shall any party be so interrogated whose dep-
36 osition has been so taken.

1 SECTION 2. Section 68 of chapter 231 of the General Laws,
2 as appearing in the Tercentenary Edition, is hereby amended
3 by adding after the word "interrogatories", in line 7, the
4 words: — ; provided, however, that this section shall not ap-
5 ply to the superior court.

1 SECTION 3. Section 24 of chapter 233 of the General Laws,
2 as so appearing, is hereby amended by adding after the word
3 "cases", in line 3, the words: — , and except that sections
4 twenty-four to forty, inclusive, shall not apply to the superior
5 court.

1 SECTION 4. Section one shall take effect upon the passage
2 of this act. Sections two and three shall take effect when the
3 rules promulgated by the justices of the superior court under
4 the provisions of section forty A of chapter two hundred and
5 thirty-three of the General Laws, inserted by section one of
6 this act, take effect.

22 the provisions of section 115 of the Charter for the purpose of
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