

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

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PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

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BANGOR:  
WHEELER & LYNDE.

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1857.

## TITLE EIGHT.

### Judicial courts, county commissioners, and officers connected with them.

- CHAP. 77. Supreme judicial court. Attorney general. Reporter.  
 78. County commissioners.  
 79. Clerks. County attorneys. Attorneys at law.  
 80. Sheriffs and their deputies. Coroners. Constables.

### CHAPTER 77.

#### SUPREME JUDICIAL COURT. ATTORNEY GENERAL. REPORTER.

##### SUPREME JUDICIAL COURT.

- SEC. 1. Court consists of a chief justice and seven associates.  
 2. Its cognizance of civil actions and criminal prosecutions.  
 3. It has the jurisdiction of the former district court.  
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 5. It superintends inferior tribunals.  
 6. May issue all necessary writs.  
 7. May punish contempts, administer oaths.  
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 10. Writs of injunction, when and how issued.  
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 16. Clerks of the districts; cases entered on docket for the district.  
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## SUPREME JUDICIAL COURT.

The court.  
 R. S., c. 96,  
 § 1, 6.  
 1847, c. 15, § 1.  
 1852, c. 246, § 5.  
 1855, c. 174, § 3.  
 1856, c. 272, § 2.  
 1857, c. 3.  
 Its cognizance  
 of actions and  
 prosecutions.  
 R. S., c. 96,  
 § 2, 3.  
 Its jurisdiction  
 of the former  
 district court.  
 1852, c. 246, § 1.  
 May exercise  
 its jurisdiction,  
 &c.  
 R. S., c. 96, § 7.  
 Superintends  
 inferior tri-  
 bunals.  
 R. S., c. 96, § 4.  
 May issue all  
 necessary  
 writs.  
 R. S., c. 96, § 5.  
 May punish  
 contempts and  
 administer  
 oaths.  
 R. S., c. 96, § 6.  
 Its equity jur-  
 isdiction.  
 R. S., c. 96,  
 § 10.  
 1856, c. 209.

SEC. 1. The supreme judicial court shall consist of a chief justice and seven associate justices, learned in the law and of sobriety of manners, who are conservators of the peace throughout the state.

SEC. 2. The court has cognizance of civil actions legally brought before it, between party and party, and between the state and individuals, and may render judgment and award execution thereon according to law; and of all offences and misdemeanors, legally prosecuted before it.

SEC. 3. It has the jurisdiction, civil, criminal, and appellate, of the former district court, and may exercise it as that court was authorized to do, or as the laws prescribe.

SEC. 4. It may exercise its jurisdiction according to the common law not inconsistent with the constitution or any statute.

SEC. 5. It has the general superintendence of all courts of inferior jurisdiction for the prevention and correction of errors and abuses, where the laws do not expressly provide any remedy.

SEC. 6. It may issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all writs and processes necessary for the furtherance of justice, or the execution of the laws.

SEC. 7. It may punish contempts committed against its authority, by fine and imprisonment or either; and administer oaths in civil and criminal cases.

SEC. 8. It has jurisdiction as a court of equity in the following cases:

*First.*—For the redemption of estates mortgaged.

*Second.*—For relief from forfeiture of penalties to the state, and from forfeitures in civil contracts and obligations, and in recognizances in criminal cases.

*Third.*—To compel the specific performance of written contracts.

*Fourth.*—For relief in cases of fraud, trusts, accident, or mistake.

*Fifth.*—In cases of nuisance and waste.

*Sixth.*—In cases of partnership and between part owners of vessels and of other real and personal property, for adjustment of their interests in the property and accounts respecting it.

*Seventh.*—To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust, and the expediency of making changes and investments of property held in trust.

*Eighth.*—In cases where the power is specially given by stat-

ute, and for discovery in the cases before named, according to the course of chancery proceedings. (a)

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SEC. 9. The bill may be inserted in a writ to be served as other writs, or it may be filed in court, and served as the rules of court prescribe.

Bill, how served.  
R. S., c. 96, § 10.

SEC. 10. Writs of injunction may be issued in cases of equity jurisdiction, and when specially authorized by statute. A justice of the court may issue them, in term time or in vacation, to continue in force until the end of the next term of the court, unless sooner dissolved, after notice to the adverse party, or upon bond taken with sufficient sureties to pay all damages and costs.

Writs of injunction, when and how to be issued.  
R. S., c. 96, § 11, c. 129, § 14.  
1846, c. 188.

SEC. 11. All writs and processes shall issue in the name of the State of Maine, under the seal of the court, attested by any justice not a party or interested in the suit, and signed by the clerk.

Writs and processes, how issued.  
R. S., c. 96, § 8, c. 114, § 21.  
1842, c. 31, § 7.

SEC. 12. It has control of all records and documents in the custody of the several clerks, including those of former courts whose jurisdiction it now has, and the powers of its clerks are the same respecting all of them.

It has control of all records.  
R. S., c. 96, § 7.  
1852, c. 246, § 2.

SEC. 13. It may establish and cause to be recorded rules not repugnant to law, respecting the modes of trial and conduct of business in suits at law and in equity.

May establish rules.  
R. S., c. 96, § 9.

SEC. 14. When sitting as a court of law, to determine questions of law, arising in suits at law and in equity, and in criminal trials and proceedings, the court shall be composed of five or more of the justices, who shall hear and determine such questions by the concurrence of five members.

Five or more sit as a court of law.  
1852, c. 246, § 6, 20.  
1854, c. 56.  
1856, c. 272, § 3.  
1857, c. 55, § 1.

SEC. 15. For this purpose the state is divided into three districts, denominated western, middle, and eastern. The western district is composed of the counties of Franklin, Oxford, Androscoggin, York, and Cumberland. The middle district, of the counties of Somerset, Lincoln, Sagadahoc, and Kennebec. The eastern district, of the counties of Aroostook, Washington, Piscataquis, Hancock, Waldo, and Penobscot.

Districts; counties composing them.  
1852, c. 246, § 4, 25.  
1853, c. 16, § 1, 2.  
1854, c. 70, § 6.

SEC. 16. The clerks of the counties of Cumberland, Kennebec, and Penobscot, shall be clerks of the districts including those counties. A docket for the district shall be kept, on which all cases pending on the dockets of the counties within it and marked law, and all other cases of which the court of law has jurisdiction, are to be entered and heard in the order of the counties as above named.

Clerks of the districts, &c.  
1852, c. 246, § 7.

SEC. 17. The following cases only come before the court as a court of law: cases in which there are motions for new trials upon evidence reported by the judge; questions of law arising on reports of cases; bills of exceptions; agreed statements of facts; cases civil or criminal, presenting a question of law; cases

Jurisdiction of the court of law.  
Cases to be entered on docket of the district.  
R. S., c. 96, § 11.  
1852, c. 246, § 8.

(a) 7 Greenl. 225; 18 Maine, 204; 20 Maine, 269; 23 Maine, 46, 98, 174; 25 Maine, 341; 29 Maine, 490; 31 Maine, 28; 37 Maine, 308; 32 Maine, 203; 33 Maine, 222; 8 Greenl. 320; 23 Maine, 448; 17 Maine, 107, 292, 404; 24 Maine, 42; 32 Maine, 399; 19 Maine, 363, 431; 25 Maine, 379, 531; 21 Maine, 251, 273; 24 Maine, 322; 25 Maine, 267; 31 Maine, 93; 32 Maine, 474; 33 Maine, 530; 22 Maine, 257; 23 Maine, 269; 17 Maine, 137; 34 Maine, 370, 143; 37 Maine, 264; 31 Maine, 340; 36 Maine, 50, 115, 577; 19 Maine, 124; 22 Maine, 191, 207, 511; 29 Maine, 273; 32 Maine, 81.

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in equity presented on demurrer to the bill, or when prepared for a final hearing; motions to dissolve injunctions issued after notice and hearing, or continued after a hearing; questions arising on writs of habeas corpus, mandamus, and certiorari, when the facts are agreed, or ascertained and reported by a judge. They are to be marked law on the docket of the county where pending, and there continued until their determination is certified by the clerk of the district to the clerk of the county.

Parties may argue in writing without entering on docket.  
1852, c. 246, § 21.

SEC. 18. When parties enter an agreement on the docket of a county under cases named in the preceding section, and transmit arguments in writing to the court before or at its next session for the district, such cases need not be entered on the docket of the district; and the court may pronounce judgment in any county, and cause it to be certified and entered, in the county where pending, as of the preceding term.

When cases not entered on docket, &c.  
36 Maine, 34.  
1852, c. 246, § 10.  
1857, c. 55, § 2.

SEC. 19. When cases mentioned in section seventeen are not entered on the docket of the district within the first two days of the next term for the district, the opposite party may during the same term enter a complaint briefly setting forth the facts, and the court, if satisfied of the truth thereof, may render judgment in his favor, as in other cases decided by said court; and if the case is on exceptions, treble costs shall be awarded from the time they were filed.

Clerks enter judgments on certificates, &c.  
R. S., c. 96, § 26, 27.

SEC. 20. The clerk of a county, by virtue of a certificate provided for in this chapter, stating the day of its reception, shall enter judgment as of the preceding term, and execution may issue as of that term; but all attachments then in force continue to be valid until thirty days after the next term in that county.

Terms of the court of law.  
1852, c. 246, § 6.  
1855, c. 174, § 1.  
1856, c. 272, § 1.  
1857, c. 55, § 1.

SEC. 21. There shall be annual sessions of the court as a court of law, for the western district, at Portland, on the second Tuesday of May; for the middle district, at Augusta, on the second Tuesday of June; for the eastern district, at Bangor, on the second Tuesday of July.

Terms for other business holden by one judge.  
1852, c. 246, § 15.

SEC. 22. For the trial of civil actions and of persons accused of offences, and for the transaction of all other business, except cases named in the seventeenth section, the court shall be holden annually by one of the justices at the following places and times.

York.  
1852, c. 258, § 1.  
Cumberland.  
1852, c. 246, § 15.

In the county of York, at Alfred, on the first Tuesdays of January and April, and third Tuesday of September.

Oxford.  
1852, c. 246, § 15.  
Franklin.  
1855, c. 111, § 1.  
Somerset.  
1853, c. 1, § 1.  
Kennebec.

In the county of Cumberland, at Portland, on the third Tuesdays of January and April, and second Tuesday of October, for the transaction of civil business; and on the first Tuesday of March, and the last Tuesdays of July and November, for the transaction of criminal business.

In the county of Oxford, at Paris, on the second Tuesdays of March, August, and November.

In the county of Franklin, at Farmington, on the third Tuesdays of April and October.

In the county of Somerset, at Norridgewock, on the third Tuesdays of March, September, and December.

In the county of Kennebec, at Augusta, on the first Tuesday

of March, third Tuesday of August, and fourth Tuesday of November.

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In the county of Lincoln, at Wiscasset, on the third Tuesday of May, for the transaction of civil business, and on the fourth Tuesday of January, and first Tuesday of October, for the transaction of civil and criminal business.

1853, c. 38, § 1.  
Lincoln.  
1852, c. 246,  
§ 15.  
1853, c. 8, § 1, 2.  
1853, c. 51, § 1.  
1856, c. 276, § 1.

In the county of Androscoggin, at Auburn, on the fourth Tuesdays of January, April, and August.

Androscoggin.  
1854, c. 60, § 2,  
c. 87, § 3.

In the county of Sagadahoc, at Bath, on the third Tuesday of December, for the transaction of civil business, and on the first Tuesday of April, and third Tuesday of August, for the transaction of civil and criminal business.

Sagadahoc.  
1854, c. 70, § 2.

In the county of Waldo, at Belfast, on the first Tuesday of January, for the transaction of civil business, and on the first Tuesdays of May and October, for the transaction of civil and criminal business.

Waldo.  
1852, c. 246,  
§ 15.  
1855, c. 165, § 1.

In the county of Penobscot, at Bangor, on the first Tuesdays of January, April, and October, for the transaction of civil business, and on the first Tuesdays of February and August, for the transaction of criminal business.

Penobscot.  
1852, c. 246,  
§ 15.  
1855, c. 158, § 1.

In the county of Washington, at Machias, on the first Tuesdays of January and October, and the fourth Tuesday of April.

Washington.  
1852, c. 246,  
§ 15.  
1854, c. 59, § 1.

In the county of Hancock, at Ellsworth, on the fourth Tuesdays of April and October.

Hancock.  
1852, c. 246,  
§ 15.  
1854, c. 76, § 1.

In the county of Aroostook, at Houlton, on the second Tuesday of March, and third Tuesday of September.

Aroostook.  
1852, c. 246,  
§ 15.

In the county of Piscataquis, at Dover, on the last Tuesday of February, and the second Tuesday of September.

Piscataquis.  
1852, c. 246,  
§ 15.

No court shall be held on the fourth day of July, second Monday of September, or any day designated for the choice of president and vice president of the United States, or for the annual fast or thanksgiving. The justices shall so hold the courts, under the direction of the chief justice, that their respective services shall be divided to each county as nearly equal as may be.

Days when court not holden.  
R. S., c. 115,  
§ 108.  
1849, c. 120.

SEC. 23. Venires for grand jurors shall be issued not less than forty days before the second Monday of September annually. The jurors returned shall serve at every term during the year, when criminal business may be transacted.

Venires for grand jurors, when issued.  
1852, c. 246,  
§ 17, 18.

SEC. 24. Venires are to be issued in due season before each term held for a county, or at such other times as the court orders, for traverse jurors, to attend on the first day of the term, or on such day as the court orders.

Venires for traverse jurors.  
1852, c. 246,  
§ 19.

SEC. 25. The justice presiding at such terms shall decide any cause without the aid of a jury, when the parties enter upon the docket an agreement authorizing it.

Judge without a jury decides, &c.  
1852, c. 246,  
§ 12.

SEC. 26. When no justice attends on the day for holding a court, the sheriff, or in his absence, the clerk, shall by oral proclamation in the court house, and by notice posted on the door thereof, adjourn the court from day to day till a justice attends, and, in case of necessity, without day, and when so adjourned, actions brought for that term shall be entered by the clerk, and

When judge does not attend, court to be adjourned; proceedings.  
R. S., c. 96,  
§ 15.

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Exceptions in civil causes and criminal cases.

R. S., c. 96, § 17.

Trials to be closed when dilatory pleas overruled or exceptions filed.

R. S., c. 96, § 18, 21.  
1852, c. 246, § 8.

Interest allowed.

36 Maine, 19.  
R. S., c. 96, § 20.

Attorney general attends law terms, &c.  
1852, c. 289, § 1.

Gives instructions to county attorneys.

R. S., c. 101, § 3.

Causes witnesses to be recognized.

R. S., c. 101, § 5.

May procure attendance of a witness out of the state.  
1845, c. 146.

Makes annual report.

R. S., c. 101, § 6.  
1852, c. 273, § 2.

Not to receive compensation from prosecutor.

R. S., c. 101, § 4.

they, with all actions on the docket, shall be continued to the next term.

SEC. 27. When the court is held by one justice, a party aggrieved by any of his opinions, directions, or judgments, in any civil or criminal proceeding, may, during the term, present written exceptions in a summary manner, signed by himself or counsel, and when found to be true they shall be allowed and signed by such judge.

SEC. 28. When a dilatory plea is overruled and exceptions taken, the court is to proceed and close the trial, and the action shall then be continued and marked law; but if the justice, allowing the exceptions, deems them frivolous or intended for delay, he may impose such terms and conditions, as he thinks reasonable, and if not accepted, he may enter judgment, subject to revision by the court of law.

SEC. 29. Interest is to be allowed on verdicts and amounts reported by referees to be due, from the time of finding or acceptance to the time of judgment.

## ATTORNEY GENERAL.

SEC. 30. The attorney general shall attend, when practicable, all the terms of the court held as a court of law; and at all capital trials, on being notified thereof by the clerk.

SEC. 31. He shall give all proper instructions to county attorneys when necessarily absent, as well as at other times.

SEC. 32. When a criminal prosecution, in which he appears, is continued, he shall cause the witnesses on the part of the state to recognize for their appearance at the term to which it is continued, unless otherwise directed by the court.

SEC. 33. When he deems the testimony of a witness residing out of the state to be material in procuring an indictment or conviction, he may procure his attendance, and the court shall allow him a reasonable compensation beyond his legal fees.

SEC. 34. He shall, annually in the month of December, make a report to the governor and council of the amount and kind of official business done by him, and the several county attorneys during the year preceding, stating the number of persons prosecuted, their alleged offences, the results, and the punishments awarded, with such suggestions as are deemed useful.

SEC. 35. He shall not receive any fee or reward, from or in behalf of any prosecutor, for official services, or during the pendency of a prosecution, be engaged as counsel or attorney for either party in a civil action depending essentially on the same facts.

## REPORTER.

Reporter, appointment, &c.  
R. S., c. 96, § 33.  
1850, c. 173, § 1, 2.

SEC. 36. The governor, with advice of council, in case of a vacancy, shall appoint a person learned in the law, to be reporter of the decisions of the court as a court of law, who shall be sworn and hold his office during the pleasure of the executive.



SEC. 37. He shall, by his personal attendance when practicable, or by the best other means in his power, prepare correct reports of all legal questions argued, and publish the same annually, reporting the cases more or less at large according to his judgment of their importance, so as not unnecessarily to increase the size or number of volumes of reports.

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His duties.  
1850, c. 173, § 3.

SEC. 38. The volumes shall be of the average size of Metcalf's reports, and equal to them in paper, printing, binding, general finish, and quantity of printed matter. He shall be entitled to the profits of the work, and shall publish at least one volume yearly, and furnish the usual number of copies to the state at the price of two dollars and fifty cents each, and furnish them, for two years after publication, for use in the state at the same price, if he does not relinquish his title to the profits thereof to the state.

How reports  
are to be pub-  
lished, price  
fixed.  
1850, c. 173, § 4.

SEC. 39. He shall be bound to prepare and publish the cases argued during his continuance in office, after his retirement, if not done while in office.

Publish cases  
argued while  
in office.  
1850, c. 173, § 5.

## CHAPTER 78.

### COUNTY COMMISSIONERS.

- SEC. 1. County commissioners elected or appointed, designate their chairman.
2. Vacancies occurring by expiration of term filled by election; tenure of office.
3. Vacancies occurring otherwise are filled by appointment.
4. Mode of election.
5. Mode of determining who is elected; when enters on discharge of duties.
6. General powers and duties prescribed.
7. Fire proof buildings for records and offices.
8. Jails erected and examined; debtors kept separate.
9. Times and places of sessions.
10. Clerk pro tempore to them may be appointed by clerk.
11. Two transact business; one adjourns; clerk may.
12. Compensation at rate of two dollars per day, and ten cents a mile for travel.
13. Accounts for services how kept and settled.
14. Copy of accounts to be published and returned to secretary of state.
15. Commissioner not to be agent to expend money.
16. Give notice to towns of intention to change site of a county building.
17. Towns by their votes to decide upon it.
18. Officers to execute precepts of the board.
19. Warrants of distress when and how issued.
20. Action of debt maintainable on their judgments.
21. Commissioners may obtain loans of money.

SEC. 1. There shall be a board of commissioners for each county, consisting of a chairman and two other citizens resident in the county, elected, or, in case of a vacancy, appointed by the governor, with advice of council. The chairman shall be designated by them at their first meeting on or after the first Monday of January annually, to act for one year.

County com-  
missioners  
elected or  
appointed, &c.  
R. S., c. 99,  
§ 1, 2,  
1842, c. 3,  
§ 3, 4.

SEC. 2. Vacancies to occur by expiration of the term of office shall be filled by election on the second Monday of September

Vacancies by  
expiration of