

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
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**ERRATA:**

**The following two leaves are  
inserted because one or more pages  
in this chapter have errors  
noticed and corrected here.**

# ERRORS.

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## ERROR IN THE TEXT OF THE REVISED STATUTES.

Page 63, § 3, line one.—Erase the last word “may.”

## ERROR IN THE TEXT OF THE REPEALING ACT.

Page 999.—Transfer “Chapter 48, Section 6, of an act to facilitate the prompt administration of justice by establishing a superior court in Kennebec County,” from the year 1879 to 1878.

## ERROR IN THE COMMISSIONER’S NOTES.

Pages 177, 178.—Erase the last two lines of page 177, and the first three lines of page 178.

## ERRORS IN THE MARGINAL REFERENCES.

Page 59, § 6, ¶ xx.—Erase “*R. S.*, c. 1, ¶ xx”, and supply, at the bottom of the page, “*R. S.*, c. 1, § 4”

“ 66, § 24.—Erase “*Resolve of 1837*, c. 52.”

“ 69, § 44.—Supply “*Resolve of 1840*, c. 107.”

“ 72, § 68.—Erase “*See c. 6*, §§ 40-67.”

“ “ § 70.—Erase “*R. S.*, c. 2, § 66.”

“ 79, § 12, (note b).—“*See c. 18*, § 73” should read “*See c. 18*, § 75.”

“ “ “ “ “*See c. 30*, § 15” should read “*See c. 30*, § 16.”

“ “ § 14.—Supply “*See c. 18*, § 75.”

“ 83, § 40.—“*R. S.*, c. 3, § 34” should read “*R. S.*, c. 3, § 33.”

“ 84, § 46.—“*See c. 18*, § 67” should read “*See c. 18*, § 59.”

“ 86, § 59, ¶ i, (note b).—“*See c. 17*, §§ 25-29” should read “*See c. 17*, §§ 27, 28.”

“ “ “ ¶ vi, (note e).—“*See c. 18*, § 15” should read “*See c. 18*, § 17.”

“ 92, note.—“*c. 18*, §§ 39, 103” should read “*c. 18*, §§ 39, 97.”

“ 97, § 16.—Erase “*R. S.*, c. 4, § 16.”

“ 108, § 86.—“*Art. ii*, § 2” should read “*Art. ii*, § 1, ¶ 2.”

“ 117, § 28.—Erase the first reference to “1878, c. 31, § 1.” Also erase “*R. S.*, c. 5, § 26.”

“ 176, § 27.—“*Resolve of 1883*, c. 20” should read “*Resolve of 1883*, c. 86.”

“ 183, § 5.—“*See § 93*, ¶ 6” should read “*See § 93*, ¶ v.”

“ 202, § 102.—“1883, c. 229” should read “*See c. 115*, § 1.”

“ 209, § 1.—Supply “1880, c. 215.”

“ 210, § 7.—Supply “1880, c. 215.”

“ 249, § 44.—“1875, c. 25, § 6” should read “1875, c. 25, § 6.”

“ 270, § 16.—Supply “1880, c. 215.”

“ 330, § 26.—“*See c. 40*, § 77” should read “*See c. 40*, § 74.”

“ “ § 28.—“*See c. 40*, § 38” should read “*See c. 40*, §§ 33, 40.”

“ 374, § 23.—“*See § 17*” should read “1880, c. 234, § 1.”

“ 384, § 74.—Add “1883, c. 138, § 3.”

“ “ “ “ “1883, c. 144, § 4.”

“ 506, § 1.—Supply “*See 1880*, c. 215.”

“ 642, § 80, bottom of the page.—Supply “1878, c. 48, § 6.”

“ 709, § 105.—“*See c. 134*, § 13” should read “*See c. 134*, § 19.”

“ 773, § 42.—Supply “1883, c. 198, § 2.”

“ 804, § 35.—“*See c. 134*, § 26” should read “*c. 134*, § 26.”

“ 861, § 1.—“*R. S.*, c. 2, § 20,” } should read “1883, c. 221.”  
“ “ “ “ *R. S.*, c. 115, § 1.” }

“ 862, § 4.—“*See c. 63*, §§ 32 to 39” should read “*See c. 63*, § 35.”

## ERRORS IN CITATIONS OF CASES.

- Page 10, § 8, ¶ iii, (note c).—"14 *Pet.*, 504" should read "14 *Pet.*, 540."  
 " 16, § 1, (note b).—"10 *Me.*, 483" should read "10 *Me.*, 283."  
 " 78, § 5, (note a).—"13 *Me.*, 472, 489" should read "13 *Me.*, 472."  
 " " § 7, (note b).—"12 *Me.*, 589" should read "12 *Me.*, 489."  
 " 147, § 97.—"58 *Me.*, 528" should read "58 *Me.*, 532."  
 " 166, § 1.—"64 *Me.*, 549" should read "64 *Me.*, 599."  
 " 200, § 93, ¶ iv.—Erase "20 *Me.*, 545."  
 " 211, § 19.—"3 *Me.*, 347" should read "3 *Me.*, 249."  
 " 241, § 5, (note b).—"68 *Me.*, 28" should read "63 *Me.*, 28."  
 " 257, § 80, (note a), Construction of ways.—"26 *Me.*, 340" should read "26 *Me.*, 240."  
 " 397, § 1, (note a).—Erase "66 *Me.*, 526."  
 " 521, § 2, (note a).—Erase "60 *Me.*, 377."  
 " " § 9.—Erase "60 *Me.*, 533."  
 " 563, § 10.—"31 *Me.*, 286" should read "31 *Me.*, 254."  
 " 597, § 23.—"4 *Me.*, 19" should read "4 *Me.*, 8."  
 " 705, § 78.—"43 *Me.*, 438" should read "48 *Me.*, 438."  
 " 728, § 12.—Erase "68 *Me.*, 30."  
 " 750, § 5.—Erase "20 *Me.*, 325."  
 " 765, § 1, (note a).—Erase "73 *Me.*, 228."  
 " 814, § 19, (note c).—Erase "71 *Me.*, 543."  
 " 817, § 8, (note b).—"27 *Me.*, 363" should read "27 *Me.*, 362."  
 " 885, § 1.—Erase "62 *Me.*, 285."  
 " 886, § 8.—"36 *Me.*, 225" should read "36 *Me.*, 227."  
 " 933, § 4.—"34 *Me.*, 478" should read "39 *Me.*, 478."

## OMISSION IN REFERENCE INDEX TABLE, PART I.

Page 1060.—Supply "1878, c. 48, § 6," with a reference to "R. S., c. 77, § 80."

CHAP. 77.

## TITLE EIGHT.

Judicial Courts, County Commissioners, and Officers  
connected with them.

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

## CHAPTER 77.

SUPREME JUDICIAL COURT. ATTORNEY GENERAL. REPORTER.  
SUPERIOR COURTS.

SUPREME JUDICIAL COURT. ORGANIZATION, GENERAL JURISDICTION AND  
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42. Jurisdiction of law court. What entry shall be made on county docket.  
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51. Exceptions in civil and criminal cases. Proceedings, if frivolous. This section applies to the superior courts.  
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CHAP. 77.

## THE SUPERIOR COURT FOR THE COUNTY OF CUMBERLAND.

- SEC. 62. Superior court for Cumberland county. Appointment and qualifications of justice.
63. Jurisdiction.
64. Civil and criminal terms.
65. Writs, when returnable.

## THE SUPERIOR COURT FOR THE COUNTY OF KENNEBEC.

- SEC. 66. Superior court for Kennebec county. Appointment and qualifications of justice.
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68. Civil and criminal terms.
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## SUPREME JUDICIAL COURT. ORGANIZATION, JURISDICTION AND POWERS.

Constitution of the court.  
R.S., c. 77, § 1.  
73 Me., 224.  
—justices may act, although their county is interested.  
Jurisdiction of all actions and prosecutions.  
R.S., c. 77, § 2.  
41 Me., 17, 55.  
49 Me., 400.  
58 Me., 375.  
—may punish for contempt, and administer oaths.  
Superintendence of inferior courts, and of records and clerks of former courts; may make rules for itself.

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 shall be conservators of the peace throughout the state, and may act in any case, although the county in which they reside or own property is interested therein.

SEC. 2. The court has cognizance of all offences and misdemeanors, and of civil actions between party and party and between the State and individuals, legally brought before it; may render judgment and award execution thereon; may exercise its jurisdiction according to the common law not inconsistent with the constitution or any statute; and may punish contempts against its authority by fine and imprisonment or either, and administer oaths in civil and criminal cases.

SEC. 3. It has general superintendence of all inferior courts for the prevention and correction of errors and abuses, where the law does not expressly provide a remedy; control of all records and documents in the custody of its clerks, including those of former courts whose jurisdiction it has, and the powers of its clerks are the same respecting all of them; and 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. (*a*)

CHAP. 77.

R.S., c. 77, § 3.

SEC. 4. The affidavit required by rule VI, of said court, to pleas or motions in abatement, may be made at any time before entry of the action or before filing the same.

Affidavit in abatement, when made. 1881, c. 39.

SEC. 5. 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, in the name of the State of Maine, under the seal of said court, attested by any justice not a party or interested in the suit, and signed by the clerk.

Writs, and how attested. R.S., c. 77, § 4. 41 Me., 17, 55. 53 Me., 88. 67 Me., 433. 70 Me., 328.

#### EQUITY POWERS.

SEC. 6. It has jurisdiction as a court of equity, in the following cases: (*b*)

Its equity powers. R. S., c. 77, § 5.

I.—For redemption of estates mortgaged.

59 Me., 35, 77.

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

53 Me., 63.

III.—To compel the specific performance of written contracts, and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.

40 Me., 132. 42 Me., 40. 46 Me., 41. 47 Me., 315. 63 Me., 99.

IV.—For relief in cases of fraud, trust, accident, or mistake. (*c*)

V.—In cases of nuisance and waste.

60 Me., 194.

VI.—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, and in cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.

1877, c. 197. 52 Me., 57. 62 Me., 114. 64 Me., 465. 73 Me., 75.

VII.—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. (*d*)

R.S., c. 77, § 5.

VIII.—In cases where the power is specially given by statute, and for discovery in the cases before named, according to the course of chancery proceedings.

43 Me., 574. 53 Me., 441.

IX.—When counties, cities, towns, school districts, village, or other public corporations, for a purpose not authorized by law, vote to pledge

1872, c. 29. 55 Me., 65. 56 Me., 37.

(*a*) 43 Me., 176; 53 Me., 88, 110; 57 Me., 23; 67 Me., 433.

(*b*) 7 Me., 231; 8 Me., 322; 17 Me., 141, 294, 407; 18 Me., 210; 19 Me., 127, 366, 434; 20 Me., 271; 21 Me., 257, 276; 22 Me., 196, 209, 515; 23 Me., 48, 100, 178, 270, 451; 24 Me., 47; 25 Me., 282, 345, 381, 537; 29 Me., 276, 496; 31 Me., 96; 32 Me., 402, 483; 33 Me., 224, 534; 34 Me., 144, 372; 36 Me., 52, 124, 583; 37 Me., 269, 310; 40 Me., 246; 41 Me., 119; 50 Me., 239; 59 Me., 79; 72 Me., 281.

(*c*) 43 Me., 211; 44 Me., 216; 45 Me., 131; 49 Me., 366; 57 Me., 510; 60 Me., 183; 61 Me., 514; 62 Me., 58, 522; 67 Me., 220; 69 Me., 497; 71 Me., 570; 73 Me., 33; 74 Me., 589.

(*d*) 49 Me., 302; 57 Me., 143, 524; 59 Me., 330, 481; 62 Me., 541; 64 Me., 493; 66 Me., 101, 535; 68 Me., 35, 381; 69 Me., 289; 70 Me., 210.

CHAP. 77.  
SEC. 6.

60 Me., 127.  
1873, c.140, § 3.  
See c. 3, § 37.

their credit or to raise money by taxation or to exempt property therefrom, or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have equity jurisdiction on petition or application of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint.

1883, c. 169.  
71 Me., 70.  
73 Me., 570.

X.—In suits for re-delivery of goods or chattels taken or detained from the owner, and secreted or withheld, so that the same cannot be replevied, and in bills in equity, by creditors, to reach and apply in payment of a debt, any property, right, title or interest, legal or equitable found within the state, of a debtor, or debtors, which cannot be come at to be attached on writ, or taken on execution in a suit at law, and not exempt from such attachment and seizure, and any property or interest conveyed in fraud of creditors.

1874, c. 175.

XI.—And has full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law. (a)

Jurisdiction to adjust matters in equity between partners and part owners, does not affect rights of persons not parties to suit.  
1873, c.140, § 1.

SEC. 7. The supreme judicial court has jurisdiction in equity between partners or part owners, to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees, and enforce their decrees by proper process in cases where all interested persons, within the jurisdiction of the court, are made parties, notwithstanding other persons interested, not within the jurisdiction of the court, are not made parties; but, in such cases, no decree affects the rights of any person not a party to the suit, unless he voluntarily becomes a party before final decree, except as hereinafter provided.

Partners or co-tenants out of jurisdiction of court, rights of, how protected.  
1873, c.140, § 2.

SEC. 8. In all such cases, the court has jurisdiction, if the case requires it, over all property of the partnership or co-tenancy within the state, and the other partners or co-tenants, out of the jurisdiction, may protect their interests by coming in at any time as parties to the bill; but, if there is no such property within the state, the jurisdiction of the court is limited to the adjustment of accounts and compelling contribution between the parties over whom the court has jurisdiction.

Masters in chancery shall be appointed and sworn; their tenure of office, duties and fees.  
R. S., c. 77, § 8.  
40 Me., 53.  
53 Me., 216, 352.

SEC. 9. The court by majority, shall appoint masters in chancery, not more than five in a county, and make all needful rules relating to proceedings before them. Such masters shall be sworn, and hold their offices for five years, unless sooner removed by the court; perform the duties pertaining to their offices according to equity practice, and be entitled to the fees therefor allowed by the court. Unless the parties agree upon another person, all cases shall be committed to them.

The supreme judicial court is always open for equity proceedings.  
1881, c. 68, § 1.

SEC. 10. Said court shall always be open in each county for equity proceedings, except upon days on which, by law, no court is held, and in the first instance, except as hereinafter provided, all hearings shall be had, all orders and decrees made, and all process issued by a single justice, except on appeal or exceptions as hereinafter provided, and said court shall establish rule-days for the return of subpoenas and the transaction of business relating to equity cases.

Causes in

SEC. 11. Causes in equity shall be begun by bill of complaint filed

(a) 58 Me., 137; 69 Me., 303; 71 Me., 554, 570; 73 Me., 244; 74 Me., 234, 588.

in the clerk's office, upon which subpoena shall issue as matter of course returnable on the first day of a term of court for the county where it is filed, or upon a rule-day, which in either case shall be held within sixty days after the filing of such bill, and such subpoena shall be served at least fourteen days before the return day thereof; or, by order of court, such subpoena may be made returnable on any day in or out of term, and be served as directed in such order; or such bill may be inserted in a writ of attachment, upon which property may be attached and which shall be made returnable as writs at common law. In all cases, service shall be made by copy of the subpoena and bill or writ of attachment. The bill of complaint shall state the material facts and circumstances relied on by the complainant, with brevity, omitting immaterial and irrelevant matters, and may be amended or reformed at the discretion of the court, with or without terms, at any time before final decree is entered in said cause.

CHAP. 77.

equity, how begun, return of subpoena, and service.  
1881, c. 68, § 2.  
56 Me., 76.  
71 Me., 169.

—service, how made.

—bill of complaint may be amended.

SEC. 12. Verification by the oath of a party for whose benefit the bill sets forth that it is prosecuted, is equivalent to such verification by the complainant.

Bill, how verified.  
1871, c. 190.

SEC. 13. If discovery is sought, it may be by bill, with or without interrogatories annexed thereto, for the purpose of such discovery. Answers thereto shall be made within thirty days after the return day of such bill, or within such time as the court orders, and questions arising thereon shall be determined by the rules established by said court as herein provided, and in the absence thereof, by the rules applicable to bills of discovery in equity procedure.

Bill of discovery, and answers thereto.  
1881, c. 68, § 3.

SEC. 14. When process is made returnable at any regular term, the respondent shall appear within the first three days thereof; otherwise on the return day of such process; and in default thereof, on motion of the complainant in writing, the bill shall be taken, pro confesso, as matter of course, at the expiration of ten days after the filing of such motion, but such decree for good cause shown, on motion of the respondent, may be opened within ten days after it is made, and in such case the court shall fix the time for making a defence.

When respondent shall appear.  
1881, c. 68, § 4.

—proceedings in case of default.

SEC. 15. Defence shall be made by answer, plea or demurrer, within thirty days after the time for appearance has elapsed, or within the time ordered by the court, as provided in the preceding section; but for good cause shown the court may in either case enlarge the time therefor. In default of such defence the bill shall be taken, pro confesso, as matter of course, on motion of complainant in writing, filed on any day after such default, and served on the respondent. But such decree may be opened, on motion of respondent within ten days thereafter, as provided in said section. All answers shall be signed by the respondent and sworn to by him, if the complainant in his bill asks for an answer upon oath, otherwise it may be signed by the respondent, his agent or attorney, but in such case it has no effect as evidence, except to cast the burden of proof upon the plaintiff.

Defence, how and when to be made.  
1881, c. 68, § 5.

—proceedings, in case of default.

—form of answer.

SEC. 16. The complainant shall file a replication within fifteen days after notice has been served on him or his counsel that answer or plea

Replication, when to be filed.

**CHAP. 77.**  
1881, c. 68, § 6.

Time for  
taking  
testimony.  
1881, c. 68, § 7.

Testimony  
to be filed,  
submitted to  
the other  
party for in-  
spection, and  
either party  
may, on mo-  
tion, have  
publication  
thereof.  
1881, c. 68, § 8.

—cause may  
be heard, on  
motion of  
either party.

Justice shall  
decide cause,  
subject to  
appeal.  
1881, c. 68, § 9.

—evidence,  
how to be  
taken and  
used.

Appeal to  
next law  
court, how  
to be claim-  
ed, and when  
heard.  
1881, c. 68, § 10.

—law court  
shall affirm,  
reverse or  
modify de-  
cree of court  
below, or  
remand for  
further  
proceedings.  
—cases shall  
remain on  
docket of  
court below,  
marked  
“law.”

has been filed, but such time may be enlarged on such terms as the court orders, or the bill may be dismissed for want of prosecution, on motion filed by respondent at any time after said fifteen days, or at the expiration of the time ordered by the court for filing such replication.

SEC. 17. Sixty days after issue joined shall be allowed for taking testimony, or the court, on motion of either party, may fix the time for complainant's testimony, to be followed by respondent's testimony, and testimony of complainant in rebuttal, each within a fixed time, and in either case, the court may for good cause shown enlarge the time.

SEC. 18. When the time for taking testimony in chief, in answer, and in rebuttal is fixed in successive periods, as provided in the preceding section, at the close of each period or the enlargement thereof, the testimony taken therein shall be filed, opened by the clerk and submitted to the inspection of the other party, and when the time for taking testimony is finally closed, either party may, on motion, as matter of course, have publication thereof, and on motion of either party the cause may be set down by the court, to be heard on bill, answer, or plea and proofs, at any time after publication; and on like motion it may be set down to be heard on bill and demurrer at any time after the demurrer is filed, and on motion of complainant it may be set down to be heard on bill and answer or plea, at any time after the expiration of the time fixed for taking testimony.

SEC. 19. The justice before whom such hearings are had, has full power to decide any motion or cause so heard, and shall make and enter such order and decree, as seems just and proper to him, and in accordance with the established principles of equity jurisprudence, subject to appeal and exceptions as hereinafter provided. Evidence may be taken by deposition or orally in presence of the court, or by an examiner appointed by the court. But all oral evidence shall be taken and reduced to writing by a stenographer or an examiner, and his copy, approved by the judge or certified by the examiner, shall be used as testimony in the cause the same as a deposition.

SEC. 20. From all final decrees of such justice, an appeal lies to the next law court to be held in the district where the cause is pending. Said appeal shall be claimed by an entry on the docket of the court from which the appeal is taken, within ten days after such decree is signed, entered and filed, and notice thereof has been given by such clerk to the parties or their counsel. The appellant shall enter such appeal, and furnish written or printed copies of the case on the first day of said law term, and for good cause shown, the law court may enlarge the time for furnishing such copies. Such appeals shall be heard at the term to which they are taken, unless otherwise agreed, or the law court shall for good cause, order a further time for the hearing thereof, and shall on such appeal, affirm, reverse, or modify the decree of the court below, or remand the cause for further proceedings, as it deems proper. All cases in which appeals or exceptions are taken from a final decree, shall remain on the docket of the court below, marked “law,” and decree shall be entered therein by a single justice, in accordance with the certificate and opinion of the law court.

SEC. 21. When an appeal is taken from a final decree, any justice may also make such order for the appointment of receivers, for injunction and prohibition, or for continuing the same in force, and such other orders as are needful for protection of the rights of the parties, or as are usual in equity proceedings in such cases, until the appeal is determined by the law court. Such orders may be modified or annulled by such justice, or by such law court, while the appeal is pending before it.

SEC. 22. An appeal may be claimed and taken in like manner from any interlocutory decree or order, but such appeal shall not suspend any proceedings under such decree or order, or in the cause, and shall not be taken to the law court until after final decree. Upon an appeal from a final decree, all previous decrees and orders are open for revision, reversal or approval.

SEC. 23. Upon a hearing in any cause in equity, the justice hearing the same may report the cause to the next law court held within the district in which it is pending, if he is of opinion that any question of law is involved, of sufficient importance or doubt to justify the same, and the parties agree thereto. The cause shall be entered and copies furnished by the complainant, and shall be heard and decided by said law court in like manner and with like results as is herein provided in case of appeals.

SEC. 24. If any party intending to appeal, by accident or mistake, fails to do so, within the time limited therefor, he may within thirty days after the entry of the decree apply to any justice for leave to take such appeal, which may be granted on such terms as appear just and equitable.

SEC. 25. Either party aggrieved may take exceptions to any ruling of law made by a single justice, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within the time allowed for appeal, and shall be made up, allowed and filed in the time provided therefor, unless further time is granted by the court, or by agreement of parties. In all other respects, such exceptions shall be taken, entered in the law court, and there heard and decided like appeals, with the same power in the single justice to make orders for injunction and prohibition, and the protection of the rights of the parties; and in the law court, to make orders and decrees pending the same and upon decision thereof; *provided*, that no question of fact is open to the law court on such exceptions. And upon request of either party, the justice hearing the cause shall give separate findings of law and fact. The allowance and hearing of exceptions shall not suspend the other proceedings in the cause.

SEC. 26. Every order and decree shall bear date upon the day on which it is filed and entered, and the day of such filing and entering shall be entered by the clerk upon the docket and on the decree.

SEC. 27. No process for enforcement of a final decree save for the appointment of receivers, for injunction or prohibition, or for continuing the same, shall issue within ten days from the entry of such decree, unless all parties waive an appeal by entry on the clerk's docket, or by writing filed in the cause, or consent in like manner to the issue thereof.

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Justice may make orders for protection of rights of parties, while an appeal is pending. 1881, c. 68, § 11.

Appeal may be taken from interlocutory decree or order; its effect. 1881, c. 68, § 12.

Justice may report cause to law court, if parties agree. 1881, c. 68, § 13.

—cause, how to be entered, heard and decided.

Justice may grant further time for appeal, in certain cases. 1881, c. 68, § 14.

Aggrieved party may take exceptions to rulings of justice. 1881, c. 68, § 15.  
—exceptions, when to be claimed, made up, allowed, and filed.

—proviso.  
—upon request, the justice shall give separate findings of law and fact.  
—other proceedings not suspended.

Date of order and decree. 1881, c. 68, § 16.

Process to enforce final decree shall not issue for ten days after entry, unless appeal is waived. 1881, c. 68, § 17.

## CHAP. 77.

What proceedings may be had, out of the county in which the cause is pending, on notice to adverse party. 1881, c. 68, § 18.

Evidence in court below, how to be reported. —no witnesses heard orally before law court. 1881, c. 68, § 19. —additional evidence.

The court may frame issues of fact in equity cases, to be tried by jury. 1881, c. 68, § 20. 65 Me., 447. —a single justice may confirm or set aside verdicts.

—appeal may be taken, and exceptions had, to rulings of law.

Writs of seizin or execution, &c., may issue. 1881, c. 68, § 21.

Preliminary injunctions may be granted complainant. 1881, c. 68, § 22. 42 Me., 127. 49 Me., 322, 308. 54 Me., 404. 55 Me., 551. 60 Me., 194, 336.

—granted to either party, if court directs.

—perpetual injunctions.

Summary process shall issue by order of court, when decree is disobeyed.

SEC. 28. Any hearing on a motion for an interlocutory decree or order may be had, or such order or decree passed, out of the county in which the cause is pending, on notice thereof to the adverse party. And the justice hearing the same shall transmit to the clerk of the county where the cause is pending any order or decree made at such hearing, but no trial before a jury upon issues framed therefor or final hearing of the cause, shall be had out of the county where the bill is pending, without consent of parties.

SEC. 29. All evidence before the court below, or an abstract thereof, approved by the justice hearing the case, shall on appeal be reported. No witnesses shall be heard orally before the law court as a part of the case on appeal, but the court may, in such manner and on such terms as it deems proper, authorize additional evidence to be taken when the same has been omitted by accident or mistake, or discovered after the hearing.

SEC. 30. The court may, in its discretion and upon application of either party, frame issues of fact in equity causes, to be tried by a jury in the county where such cause is pending. A single justice may confirm any verdicts rendered upon such issues, and enter appropriate decrees thereon, or he may set aside such verdicts, and render such decrees as equity requires, as if such issues had not been framed. In all causes where such issues are framed and tried, an appeal may be taken, and exceptions had to rulings of law, as hereinbefore provided, and upon such appeal or exception, the law court may confirm or set aside the verdicts rendered in the cause, or order a new trial of such issues, and make such disposal of the case as equity demands. All such appeals and exceptions shall be taken, heard and determined as provided by this chapter.

SEC. 31. Writs of seizin or execution, and all other process appropriate to causes in equity, may be issued by the court, to enforce its decrees.

SEC. 32. Preliminary injunctions may be granted by a single justice in term time or in vacation, upon the complainant filing a bond with sufficient sureties conditioned to pay all damages and costs caused thereby, if he is finally found not entitled to such injunction, unless a single justice, on motion to dissolve the same and hearing on the merits thereof, refuses to dissolve it. Such damages and costs shall be awarded by the court on motion, but if not so awarded before final decree, they may be determined in a suit on such bond. Such injunction may also be granted to either party on hearing, without bond, upon oral evidence, depositions or affidavits, and upon such notice and with such time for pleading, evidence and hearing as the court directs. No preliminary injunction shall be granted to either party unless his pleadings contain an application therefor; but an injunction may be granted pending the suit, in proper cases, upon motion and hearing. Perpetual injunctions may be granted by the court or any justice thereof making final decree.

SEC. 33. Whenever a party complains in writing, and under oath, that the process, decree or order of court, which is not for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue by order of any justice, requiring such person

to appear on a day certain and show cause why he should not be adjudged guilty of contempt, and such process shall fix a time for answer to the complaint, and may fix a time for a hearing on oral testimony, depositions, or affidavits, or may fix successive times for proof, counter proof, and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may, for good cause, enlarge the time for such hearing. If the person so summoned does not appear as directed, or does not attend the hearing at the time appointed therefor, as enlarged, or if, upon hearing, he is found guilty of such disregard or disobedience, he shall be adjudged in contempt, and the court may issue a *capias* to bring him before it to receive sentence, and may punish him by such reasonable fine or imprisonment as the case requires. The court may allow such offender to give bail to appear at a time certain, when such punishment may be imposed, if he continues in contempt. But when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail shall be allowed. When such person purges himself of his contempt, the justice may remit such fine or imprisonment or any portion thereof. No appeal lies from any order or decree for such punishment, nor shall exceptions thereto be allowed, save upon questions of jurisdiction, nor in any case shall such exceptions suspend the enforcement of any such order or decree, unless the court so directs.

SEC. 34. When a justice deems any exceptions allowed by him, or any appeal in a proceeding in equity, frivolous and intended for delay, he may so certify on the motion of the party not excepting, and such exceptions and appeal and the record connected therewith shall be transmitted to the chief justice, and be argued in writing on both sides within thirty days thereafter, unless the justice transmitting the same, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the cause is pending; and if the decision is adverse to the party taking such appeal or exceptions, treble costs may be allowed the prevailing party.

SEC. 35. In case of any decree, an absent respondent whose property has been attached and who does not appear by the record to have been served with process within the state and has made no appearance before final process, shall have a review within one year after final decree, as of right, with stay or supersedeas of such process. The respondent may in such case apply to any justice by petition setting forth the grounds for such review, whereupon, if such justice orders reasonable notice to the other party, to appear at a time and place named therein, to show cause why such review should not be granted, when such review is granted, the justice may prescribe the time in which the respondent's defence shall be made. Reviews may also be granted on petition, whenever, by fraud, accident or mistake, and without fault of the party against whom the decree was ordered, justice has not been done; *provided*, that the petition therefor is filed within six years after final decree; and notice may be ordered and served with like rights of stay or

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1881, c. 68, § 23.  
49 Me., 399.  
60 Me., 334.

—proceedings, and punishment for contempt.

—bail.

—no appeal; exceptions.

Justice may, on motion, certify exceptions to be frivolous and intended for delay, and transmit them to the chief justice. 1881, c. 68, § 24.  
—proceedings.

Absent respondent, not served with process, shall have review within one year. 1881, c. 68, § 25.

—proceedings.

—when review may be granted, on petition.

—proviso.

**CHAP. 77.** supersedeas as herein provided. Upon granting the review, the court may fix a time within which the next proceeding shall be had.

Revisory power of court, save on appeal, not abridged. 1881, c. 68, § 26. Court shall make rules for practice in equity cases. 1881, c. 68, § 27.

**SEC. 36.** Nothing herein contained abridges the power of the court to hold all interlocutory orders and decrees subject to revision, at any time before final decree, except when they have been decided on appeal.

**SEC. 37.** The court shall make all proper rules for the regulation of equity practice necessary to simplify proceedings, discourage delays and lessen the expense of litigation, and it has full power for that purpose ; but no rule of court now existing is repealed hereby, except so far as it is inconsistent herewith.

#### LAW COURT.

Five or more justices sit as a court of law; when less suffice. R.S., c. 77, § 9. 41 Me., 17. 45 Me., 153. 57 Me., 510, 540.

—verdict to stand, unless majority concur in granting new trial.

**SEC. 38.** 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 ; but when any of them cannot act in a case by reason of interest or other disqualification, a majority of the others is sufficient ; and in any civil action in which there is a subsisting verdict, if a majority of the justices qualified to act in the case, after mature consideration and consultation, do not concur in granting a new trial, the court shall order judgment on the verdict.

Law districts defined, and when courts shall be held in each. R.S., c. 77, § 10.

**SEC. 39.** For the purpose of the law court, the state is divided into three districts, the Western, Middle and Eastern. The first is composed of the counties of Franklin, Oxford, Androscoggin, York and Cumberland ; and an annual session of the court shall be held therein, at Portland, on the third Tuesday of July. The second, of Somerset, Knox, Lincoln, Sagadahoc and Kennebec ; and an annual session of the court shall be held therein, at Augusta, on the fourth Tuesday of May. The third, of Aroostook, Washington, Piscataquis, Hancock, Waldo and Penobscot ; and an annual session of the court shall be held therein, at Bangor, on the third Tuesday of June. A meeting of all the justices shall be annually held at Augusta during the law term ; and all undecided questions of law and equity previously submitted, shall then be decided.

—annual session of all the justices at Augusta, to dispose of all undecided cases.

By consent, cases may be heard out of the district, and when. R.S., c. 77, § 11.

**SEC. 40.** By consent of parties, any action or other matter which properly comes before the law court, may be entered and heard in either judicial district, and is in order after the regular business of the district is disposed of.

Clerks of districts. R.S., c. 77, § 12. —law cases shall be entered on district docket.

**SEC. 41.** The clerks of the counties of Cumberland, Kennebec, and Penobscot, are 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 law court has jurisdiction, shall be entered and heard in the order of the counties as above named.

Jurisdiction of the law court. 1874, c. 231.

**SEC. 42.** 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 justice ; questions of law arising on reports of cases ; bills of exceptions ; agreed statements of facts ; cases, civil or criminal, pre-



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senting a question of law; all questions arising in equity cases; 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 on, or are ascertained and reported by a justice. They shall be marked "law" on the docket of the county where they are pending, and there continued until their determination is certified by the clerk of the district to the clerk of the county, and the court shall, immediately after the decision of the question submitted to it, make such order, direction, judgment, or decree, as is fit and proper for the disposal of the case, and cause a rescript in all civil suits, briefly stating the points therein decided, to be filed therein, which rescript shall be certified by the clerk of the district to the clerk of the county where the action is pending, and to the reporter of decisions; and if no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued, the case, together with such rescript, if the reporter deems the same of sufficient importance for publication. (a)

—law cases,  
how to be  
marked.

—how to be  
disposed of.

—rescripts.

SEC. 43. 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 it is pending, as of the preceding term.

Parties, by  
agreement,  
may argue in  
writing,  
without  
entering on  
docket.  
R.S., c. 77, § 14.  
57 Me., 510.

SEC. 44. When cases mentioned in section forty-two are not entered on the docket of the district within the first two days of the next law term, the opposite party may, at that 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 it; and if the case is on exceptions, treble costs shall be awarded from the time when they were filed.

Complaint  
may be filed  
for not enter-  
ing cases on  
law docket,  
and how  
disposed of.  
R.S., c. 77, § 15.  
36 Me., 35.  
—treble  
costs.

SEC. 45. The clerk of a county, by virtue of a certificate, provided for in this chapter, received in vacation, shall enter judgment as of the preceding term, and execution may issue as of that term; but attachments then in force continue for thirty days after the next term in that county; and if the defendant was arrested on mesne process and gave bond to disclose after judgment, he may do so after said next term without breach of his bond. *Provided*, that where a party to a suit dies while the action is pending before the law court, and no suggestion of such death has been made upon the docket of the county where the action is pending, at the time when the certificate of decision is received by the clerk of the court in such county, any justice of the supreme judicial court may, in term time or vacation, order such action to be brought or carried forward on such county docket to a subsequent term of the court in such county, in order that such death may be suggested upon the docket, and the proper parties entitled to defend or prosecute such suit may enter their appearance therein, and that the judgment in

Clerks shall  
enter judg-  
ment on cer-  
tificate, as of  
preceding  
term; attach-  
ments and  
rights to  
disclose, are  
preserved  
until thirty  
days after  
the next  
term.  
1877, c. 181.  
68 Me., 203.  
72 Me., 451.

—provision,  
where a party  
to a suit dies,  
while action  
is pending  
before law  
court.  
See c. 82, § 36.  
c. 87, §§ 7, 10.

(a) 41 Me., 18; 45 Me., 153, 418; 46 Me., 331; 50 Me., 272; 56 Me., 233; 57 Me., 23, 510; 59 Me., 580; 62 Me., 320; 67 Me., 133; 68 Me., 203, 343; 70 Me., 333; 72 Me., 104; 73 Me., 139, 224; 74 Me., 109.

**CHAP. 77.** said action may be entered up at such subsequent term, in accordance with such certificate from the law court.

Attachments continue in certain cases, where plaintiff dies, within thirty days after judgment in his favor.  
1879, c. 86.

—if defendant has been arrested, proceedings.

**SEC. 46.** When a plaintiff dies before the expiration of thirty days from the rendition of judgment in his favor, or before the expiration of thirty days after the next term of court in the county where the action was pending, in cases where a certificate of decision, provided for in this chapter, is received by the clerk of said county, in vacation, and no suggestion of such death has been made upon the docket of said courts, execution may issue as is now provided, and all attachments then in force continue for ninety days after the next term of the court in that county; and if the defendant was arrested on mesne process, and gave bond to disclose after judgment, he may do so after said next term without breach of his bond.

#### TRIAL COURTS.

Trial terms, shall be held by one justice in each county.  
R.S., c. 77, § 17.

**SEC. 47.** For the trial of civil actions and of persons accused of offences, and for the transaction of all other business, except cases named in section forty-two, the court shall be held annually by one justice, at the following places and times; and the justices shall so hold said terms, under direction of the chief justice, that their services shall be divided to each county as equally as may be.

—Andros-coggin.

In the county of Androscoggin, at Auburn, on the third Tuesdays of January, April and September:—

—Aroostook.

Aroostook, at Houlton, on the last Tuesday of February, and the third Tuesday of September:—

—Cumberland.

Cumberland, at Portland, on the second Tuesdays of January, April and October, for civil business:—

—Franklin.

Franklin, at Farmington, on the first Tuesday of March, and the fourth Tuesday of September:—

—Hancock.

Hancock, at Ellsworth, on the second Tuesdays of April and October:—

—Kennebec.  
1878, c. 12,  
§§ 1, 2.

Kennebec, at Augusta, on the first Tuesday of March, and the third Tuesday of October, for civil business:—

—Knox.  
R.S., c. 77, § 17.

Knox, at Rockland, on the second Tuesdays of March and December, and the third Tuesday of September:—

—Lincoln.

Lincoln, at Wiscasset, on the fourth Tuesdays of April and October:—

—Oxford.  
1881, c. 86.

Oxford, at Paris, on the second Tuesday of March, and the third Tuesday of September:—

—Penobscot.  
R.S., c. 77, § 17.

Penobscot, at Bangor, on the first Tuesdays of January, April and October, for civil business, and on the first Tuesday of February and the second Tuesday of August, for criminal business:—

—Piscataquis.

Piscataquis, at Dover, on the last Tuesday of February, and the second Tuesday of September:—

—Sagadahoc.  
1877, c. 150.

Sagadahoc, at Bath, on the first Tuesday of April, and the third Tuesdays of August and December:—

—Somerset.  
1872, c. 8, § 1.  
60 Me., 363.

Somerset, at Skowhegan, on the third Tuesdays of March, September, and December:—

—Waldo.  
R.S., c. 77, § 17.

Waldo, at Belfast, on the first Tuesday of January, and the third Tuesdays of April and October:—

Washington, at Machias, on the first Tuesdays of January and October, and at Calais, on the fourth Tuesday of April:—

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York, at Saco, on the first Tuesday of January, and at Alfred, on the third Tuesdays of May and September.

—Washing-  
ton.  
—York.

SEC. 48. No court shall be held on Sunday, on any day designated for the annual fast or thanksgiving, or for the choice of presidential electors, the thirtieth day of May, fourth day of July, the day of the State election, or on Christmas day; and when the time fixed for a term of said court falls on either of said days it shall stand adjourned until the next day, which shall be deemed the first day of the term for all purposes.

Legal  
holidays.  
1874, c. 202, § 2.

SEC. 49. 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.

When justice may try cases alone.  
R.S., c. 77, § 19.  
5 Me., 140.  
65 Me., 81.

SEC. 50. 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 until 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 they, with all actions on the docket, shall be continued to the next term.

When justice does not attend, court shall be adjourned; proceedings.  
R.S., c. 77, § 20.  
56 Me., 425.

SEC. 51. 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 true they shall be allowed and signed by such justice; but if he deems them frivolous and intended for delay, he may so certify on motion of the party not excepting; and such exceptions may then be transmitted at once by such justice to the chief justice, and shall be argued in writing on both sides within thirty days thereafter, unless the presiding justice, for good cause, enlarges the time, and they shall be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the case is pending. This section applies to exceptions filed in any criminal proceeding in either of the superior courts. (a)

Exceptions, in civil and criminal cases.  
R.S., c. 77, § 21.

—proceedings, if they are deemed frivolous.

—this section applies to superior courts.  
1880, c. 188.

SEC. 52. When a dilatory plea is overruled and exceptions taken, the court shall proceed and close the trial, and the action shall then be continued and marked "law," subject to the provisions of the preceding section. (b)

Trial to proceed when dilatory pleas are overruled.  
R.S., c. 77, § 22.

SEC. 53. In all cases taken to the law court for argument and decision, except appeals by attorneys at law from judgments of court rendered against them on information, all copies of the case, abstracts containing the substance of all the material facts, pleadings and documents on

Copies, in law cases, may be printed or written.  
1879, c. 121.  
See c. 79, § 36.

(a) 41 Me., 18; 45 Me., 154, 418; 49 Me., 401; 56 Me., 25, 249; 57 Me., 292; 58 Me., 233; 60 Me., 464; 62 Me., 321; 64 Me., 176, 210; 65 Me., 81; 67 Me., 231, 387, 444; 74 Me., 109, 212.

(b) 53 Me., 541; 65 Me., 367; 67 Me., 38; 71 Me., 28.

CHAP. 77. which the parties rely, may either be printed or fairly and legibly written on good paper.

Interest on  
verdicts and  
awards.  
1873, c. 138.

SEC. 54. Interest shall be allowed on verdicts and amounts reported by referees to be due, from the time of finding such verdicts or making such reports, to the time of judgment. (a)

#### ATTORNEY GENERAL.

To attend  
law courts  
and instruct  
co. att'ys.  
R.S., c. 77, § 24.

SEC. 55. The attorney general, when practicable, shall attend all terms of the law court, and all capital trials, on notice from the clerk, and give all proper instructions to county attorneys when he is absent, and at other times.

Cause  
witnesses to  
recognize,  
and procure  
attendance  
of those out  
of the state.  
R.S., c. 77, § 25.

SEC. 56. When a criminal prosecution, in which he appears, is continued, he shall cause the witnesses in behalf of the State to recognize to appear at the next term, unless otherwise directed by the court, and may procure the attendance of a witness living out of the state deemed by him material in procuring an indictment or conviction; and the court shall allow such witness a reasonable compensation beyond his legal fees.

Make annual  
report.  
R.S., c. 77, § 26.

SEC. 57. He shall, annually, on the first day of December, make a report to the governor and council of the amount and kind of official business done by him, and by the several county attorneys during the year preceding, stating the number of persons prosecuted, their alleged offences, the results, and the punishments awarded, with any useful suggestions.

Shall not  
receive pay  
from  
prosecutor.  
R.S., c. 77, § 27.

SEC. 58. 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;  
appoint-  
ment, oath  
and tenure  
of office.  
R.S., c. 77, § 28.

SEC. 59. The governor, with the advice and consent of council, shall, in case of a vacancy, appoint a person learned in the law, to be reporter of the decisions of the law court, who shall be sworn and hold his office during the pleasure of the executive. (b)

He shall  
make reports,  
have the  
profits, and  
sell to the  
state at a  
price fixed by  
the governor  
and council.  
R.S., c. 77, § 29.

SEC. 60. 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, reporting the cases more or less at large according to his judgment of their importance. He is 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 a price fixed by the governor and council; and for two years after publication, shall furnish them at the same price for use in the state, unless he relinquishes to the State his right to the profits thereof. The volumes shall be of the average size of the present Massachusetts reports, and be equal to them in paper, printing, binding, general finish and quantity of printed matter.

—size and  
style of  
volumes.

After retir-  
ing, he is to  
publish cases  
argued while  
in office.

SEC. 61. After ceasing to hold office, he shall prepare and publish all unpublished cases argued while in office; and if a reporter dies, his successor shall complete his unfinished work; furnish copies thereof to

(a) 36 Me., 22; 50 Me., 338; 53 Me., 515.

(b) 72 Me., 543-565.

the State as the deceased was bound to do, and be entitled to the profits thereof, paying to the legal representatives of his predecessor such consideration for his interests therein, as the governor and council deem equitable.

CHAP. 77.

—death of  
reporter,  
proceedings  
in case of.  
R.S., c. 77, § 30.

#### THE SUPERIOR COURT FOR THE COUNTY OF CUMBERLAND.

SEC. 62. The superior court established at Portland, within and for the county of Cumberland, shall consist of one justice, an inhabitant of said county, of sobriety of manners and learned in the law, who shall be appointed, commissioned and qualified according to the constitution, and shall reside during his continuance in office, in Portland.

Superior  
court for  
Cumberland  
county.  
1868, c. 151, § 1.  
—qualifica-  
tion of  
justice.

SEC. 63. Within said county, said superior court has exclusive jurisdiction of civil appeals from municipal and police courts and trial justices; exclusive original jurisdiction of actions of scire facias on judgments and recognizances not exceeding five hundred dollars; of bastardy trials, and of all other civil actions at law not exclusively cognizable by municipal and police courts and trial justices, where the damages demanded do not exceed five hundred dollars, except complaints for flowage, real actions, and actions of trespass quare clausum; and concurrent original jurisdiction of actions of trespass quare clausum, and of proceedings in habeas corpus; and of all other civil actions at law where the damages exceed five hundred dollars, except complaints for flowage and real actions.

Jurisdiction.  
1868, c. 151, § 5.  
57 Me., 154.  
60 Me., 463.

SEC. 64. Said court shall be held for civil business on the first Tuesdays of every month, except June, July and August; but the criminal business of said county shall be transacted at the terms held on the first Tuesdays of January, May and September, together with civil business.

Civil and  
criminal  
terms.  
1868, c. 151, § 6.  
1868, c. 216, § 2.  
64 Me., 530.

SEC. 65. Actions shall be made returnable at one of the three terms next begun and held after the commencement thereof.

Writs, when  
returnable.  
1868, c. 151, § 6.

#### THE SUPERIOR COURT FOR THE COUNTY OF KENNEBEC.

SEC. 66. The superior court established at Augusta, within and for the county of Kennebec, shall consist of one justice, an inhabitant of said county, of sobriety of manners and learned in the law, appointed, commissioned, and qualified according to the constitution.

Superior  
court for  
Kennebec.  
1878, c. 10, § 1.  
—qualifica-  
tion of  
justice.

SEC. 67. Within said county, said superior court has exclusive jurisdiction of civil appeals from municipal and police courts, and trial justices, exclusive original jurisdiction of actions of scire facias on judgments and recognizances not exceeding five hundred dollars; of bastardy trials, and of all other civil actions at law not exclusively cognizable by municipal and police courts, and trial justices, where the damages demanded do not exceed one thousand dollars, except complaints for flowage, real actions, and actions of trespass quare clausum; and concurrent original jurisdiction of proceedings in habeas corpus, and libels for divorce; and of all civil actions at law where the damages exceed one thousand dollars, except complaints for flowage, real actions and actions of trespass quare clausum.

Jurisdiction.  
1878, c. 10, § 3.  
73 Me., 514.

1883, c. 244.  
1879, c. 165, § 1.

SEC. 68. Said court shall be held on the first Tuesdays of February and April, the second Tuesday of June, and the first Tuesdays of Sep-

Civil and  
criminal  
terms.

**CHAP. 77.** tember and December; but the criminal business of said county shall be transacted at the terms held on the first Tuesdays of December, April and September, together with civil business.

**SEC. 69.** Actions shall be made returnable at one of the next two terms begun and held after the commencement thereof.

GENERAL PROVISIONS APPLICABLE TO BOTH OF THE SUPERIOR COURTS.

**SEC. 70.** Each of said justices shall establish a seal for his said court; all writs and processes issuing from either of said superior courts shall be in the name of the State, of the usual forms, bearing the teste of the justice thereof, under the seal of said court; they shall be signed by its clerk, and be obeyed and executed throughout the state.

**SEC. 71.** The clerk for the time being of the supreme judicial court in each of said counties is also clerk of the superior court thereof. He shall appoint a deputy approved by the justice of such superior court, who shall act as clerk thereof whenever said court and the supreme judicial court are both in session in such county. And whenever said clerk of the supreme judicial court is absent, or the office is vacant, such justice may appoint a clerk for his court during such absence, or until an appointment is made by the governor and council, or by the supreme judicial court.

**SEC. 72.** The sheriff of each of said counties shall attend the superior court thereof unless the supreme judicial court is in session in such county, in which case he shall specially designate a deputy, approved by the justice of such superior court, so to attend. And whenever it happens that such justice is prevented from attending at the time and place at which such court by law or by adjournment ought to be held, said sheriff or such deputy shall, by oral proclamation, adjourn said court from day to day, until such justice attends.

**SEC. 73.** Venires for grand jurors to serve at said superior courts shall be issued at least forty days before the first Tuesday of September, annually, and such jurors shall serve at every term of said courts for the transaction of criminal business throughout the year. Traverse jurors shall be drawn and returned to serve at the several terms of said courts as in the supreme judicial court, except that the same jurors may be required by the justice presiding to serve for two successive terms.

**SEC. 74.** If the plaintiff in either of said superior courts desires a jury trial, he must indorse the same upon his writ at the time of entry. The defendant shall, within fourteen days after entry, file his pleadings, and if the plaintiff has not demanded a jury, the defendant must indorse on his plea his demand for a jury, if he desires one. But whenever by accident or mistake the plaintiff fails to indorse on his writ at the time of entry a request for a jury trial, or if the defendant by accident or mistake fails to indorse upon his plea, when filed, a demand for a jury, the court may, on motion of either party, at its discretion order a trial by jury in the cause. Whenever a jury is so demanded by either party, or ordered by the court, the clerk shall enter the fact on the docket, and all other cases, except appeals, shall be tried by the justice without the

Writs, when returnable.  
1878, c. 10, § 6.

Seal; form of writs and processes, and how issued.  
1868, c. 151, § 2.  
1878, c. 10, § 2.

Clerk.  
1868, c. 151, § 3.  
1878, c. 10, § 3.  
1879, c. 150, § 5.  
See c. 115, § 5.

—clerk may appoint deputy.

—vacancy, how filled.

Sheriff or deputy to attend court.  
1868, c. 151, § 4.  
1878, c. 10, § 4.

Grand jurors.  
1863, c. 216, § 3.  
1878, c. 10, § 17.

—traverse jurors.  
1868, c. 151, § 6.  
1878, c. 10, § 6.

Proceedings, if jury trial is desired by plaintiff or defendant.  
1868, c. 151, § 6.  
1878, c. 10, § 6.  
1874, c. 245.  
57 Me., 38.  
60 Me., 43.  
63 Me., 87.  
152.

—all other cases, save appeals, to

intervention of a jury, subject to exceptions in matters of law, in term time, or if both parties desire, at chambers. When a defendant, legally served, does not appear by himself or attorney within the first three days of the term, he shall be defaulted as in the supreme judicial court. If the defendant does not file his pleadings as hereinbefore provided, he shall be defaulted on the first day of the next term after entry, unless the court for good cause grants leave to file a plea or otherwise lawfully disposes of the action. All actions duly answered to shall be in order for trial at the next term after entry, and shall be so tried, except for good cause. Appeals shall be entered by the appellant as in the supreme judicial court, and appeals shall be in order for trial at the first term.

CHAP. 77.

be tried by  
justice.  
1873, c. 123.  
1868, c. 151, § 6.  
1878, c. 10, § 6.

—order of  
trials.

—appeals,  
how entered.

SEC. 75. Exceptions may be alleged as in the supreme judicial court and entered, heard and determined at the law term held in the district, *provided*, that when the next law term happens to be held in either of the other districts, the justice of the superior court may, on motion of the party not excepting, certify the exceptions to said next law term, if, in his opinion, they are alleged mainly for delay, but the party so moving shall be deemed to waive his right to be heard in opposition to said exceptions, which shall be entered and determined at said next law term without argument by said party and upon the oral or written argument of the party excepting. Cases certified upon agreed statement of facts, and reports and motions for new trials, shall be entered, heard and determined at the next law term in the district, but any case for the law court may, by agreement of parties, be entered at the next law term held in either district. And all exceptions arising in cases within the exclusive jurisdiction of either of said superior courts may be certified at once by the justice thereof to the chief justice of the supreme judicial court, and shall, when so certified, be argued in writing on both sides within thirty days thereafter, unless the justice of such superior court for good cause, enlarges the time, and exceptions so certified shall be considered and determined by the justices of the supreme judicial court, as soon as may be. Decisions of the law court on all exceptions and questions from said superior courts shall be certified to the clerk of either of said superior courts with the same effect as in cases originating in the supreme judicial court in the county.

Exceptions.  
1868, c. 151, § 7.  
1878, c. 10, § 7.  
59 Me., 198.  
67 Me., 77.

—cases cer-  
tified upon  
agreed state-  
ment, reports  
and motions,  
when to be  
determined.

—decisions  
shall be  
certified to  
clerk.

SEC. 76. When a demurrer to a declaration is overruled, the defendant, notwithstanding he excepts, may plead anew within such time as the justice orders, but in all cases where exceptions are alleged by the defendant, the action shall, notwithstanding, remain upon the docket of the superior court and be proceeded with as if no exceptions had been taken, until the case is in such a condition that the overruling of said exceptions would finally dispose of it. And the action shall then be transferred to the law court, or certified to the chief justice thereof, as hereinbefore provided for the hearing and determination of all exceptions arising in any stage of the case.

When  
demurrer is  
overruled,  
defendant  
may plead  
anew.  
1868, c. 151, § 8.  
1878, c. 10, § 8.

—actions to  
remain on  
docket until  
finally  
disposed of.

SEC. 77. The supreme judicial court, sitting as a court of law in either district, has the same jurisdiction of all questions of law, motions for new trials, and questions arising on reports or agreed statements of

Jurisdiction  
of law court  
over ques-  
tions of law.  
1868, c. 151, § 9.

CHAP. 77.  
1878, c. 10, § 9.  
63 Me., 121.

—transfer of  
actions to  
law court.

Authority  
of court.  
1868, c. 151,  
§ 10.  
1878, c. 10, § 10.

Final judgments may  
be re-examined in supreme  
court; proceedings.  
1868, c. 151,  
§ 11.  
1878, c. 10, § 11.

Justice of  
supreme  
court may  
hold superior  
court in case  
of illness or  
absence of  
superior  
justice.  
1868, c. 151,  
§ 12.  
1878, c. 10, § 12.

—teste of  
writs in case  
of vacancy.

—cases  
transferred  
to supreme  
court, when  
justice is  
disqualified.

facts originating in the superior court within such district, as if they had originated in the supreme judicial court therein; and said law court sitting in any district has the same jurisdiction of all questions and motions certified thereto from the superior court within either district as hereinbefore provided. And all provisions of law and rules of the supreme judicial court relative to the transfer of actions and other matters from the supreme judicial court for said county, or from its docket to the docket of said law court, and all provisions of law and rules regulating proceedings in such cases, and the effects of such proceedings, apply to the transfer of actions from either of the superior courts or the dockets thereof to said law court, and to the proceedings in such cases, and the effect thereof, except so far as they are inconsistent with the foregoing provisions.

SEC. 78. Said superior courts may administer all necessary oaths, render judgment and issue execution, punish for contempt, and compel attendance, as in the supreme judicial court; make all such rules and regulations, not repugnant to law, as may be necessary and proper for the administration of justice promptly and without delay; and the provisions of law relative to the jurisdiction of the supreme judicial court in each of said counties over parties, the arrest of persons, attachment of property, the time and mode of service of precepts, proceedings in court, the taxation of costs, the rendition of judgments, the issuing, service and return of executions, and all other subjects, apply to each of said superior courts in all respects, except so far as they are modified by this chapter; and each of said superior courts is clothed as fully as the supreme judicial court, with all the powers necessary for the performance of all its duties.

SEC. 79. Final judgments in said superior courts may be re-examined in the supreme judicial court on a writ of error, or on petition for review, and when the judgment is reversed, the supreme judicial court shall render such judgment as the superior court should have rendered, and when a review is granted, it shall be tried in said supreme judicial court, which has the same power to grant writs of supersedeas of executions issued from said superior courts, as it has of executions issued from the supreme judicial court.

SEC. 80. Whenever the justice of either of said superior courts is by reason of continued illness, or other cause, prevented from holding a term or terms of said court, any justice of the supreme judicial court may, at the request of such justice of said superior court, hold such term or terms of said superior court, in place of the justice thereof. And during a vacancy in the office of justice of either of the superior courts, all writs issued from the office of the clerk thereof, shall bear teste of any one of the justices of the supreme judicial court. Whenever the justice of either of the superior courts is disqualified by interest, relationship, or other lawful cause from trying any cause pending in his said court, said case shall thereupon be transferred to the docket of the supreme judicial court for the county, and be disposed of in said court according to law.



SEC. 81. The original and appellate jurisdiction in all criminal matters in said counties of Cumberland and Kennebec, and all powers incident thereto, originally exercised by the supreme judicial court, but heretofore conferred upon and exercised by said superior courts, are continued.

## CHAP. 77.

Criminal jurisdiction.  
1868, c. 216, § 1.  
1878, c. 10, § 15.  
56 Me., 491.  
60 Me., 507.

SEC. 82. All exceptions or questions arising in any way during the trial of criminal cases in either of said superior courts, shall be transferred to the law docket of the supreme judicial court for the district, and have day therein, and if said exceptions are sustained, or a new trial is ordered, the cause shall be remanded to such superior court for trial. Motions for a new trial in criminal cases tried in either of the superior courts, shall be heard and finally determined by the justice thereof.

Exceptions in criminal cases, when to be heard.  
1868, c. 216, § 4.  
1878, c. 10, § 18.

See § 51.

SEC. 83. The jurisdiction of the supreme judicial court for the trial of civil and criminal cases in the counties of Cumberland and Kennebec, is limited in conformity to the foregoing provisions.

Jurisdiction of S. J. C. limited.  
1868, c. 151, § 13.  
1868, c. 216, § 5.  
1878, c. 10, § 13, 15.

## CHAPTER 78.

### COUNTY COMMISSIONERS.

#### THEIR ELECTION AND TENURE OF OFFICE.

- SEC. 1. Board consists of a chairman and two other resident citizens elected or appointed. Chairman shall be designated January first.
2. Vacancies by expiration of term, shall be 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 they enter on discharge of duties. Provisions applicable to the election of other officers. Copy may be substituted for defective return.

#### THEIR REGULAR SESSIONS AND CLERK.

- SEC. 6. Regular sessions; times and places thereof.
7. Clerk of the courts is clerk of commissioners. When he may appoint clerk pro tempore. His oath and duty.

#### THEIR POWERS AND DUTIES.

- SEC. 8. Two are a quorum. Adjournments, when no quorum attends.
9. Officers shall execute precepts of the board.
10. Are financial agents of the county; and manage its business and property.
11. Shall provide and keep in repair court-houses, jails, and fire-proof rooms for the records and papers of the county offices.
12. May provide jail workshops, and raise \$5,000 therefor.
13. May furnish materials and implements, establish rules for government of prisoners employed, and contract for their labor.
14. Must notify towns of intention to remove site of county buildings; towns shall decide by vote thereon.
15. Shall examine jail at each session.
16. Commissioners and sheriff shall publish report of jails, each December.