

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SEVENTY-THIRD LEGISLATURE

HOUSE.

No. 348

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND SEVEN.

AN ACT to establish a General Superior Court.

*Be it enacted by the Senate and House of Representatives in
Legislature assembled, as follows:*

Section 1. The present superior courts of the counties of
2 Cumberland and Kennebec, together with such extensions
3 of superior court jurisdiction in other counties as may be
4 herein or hereafter provided, shall hereafter constitute the
5 superior court of the state. Two additional justices shall
6 be appointed, commissioned and qualified, in accordance
7 with the constitution of the state. The superior court and
8 the justices thereof, present and to be hereafter appointed,
9 shall have and exercise jurisdiction as hereinafter provided.
10 One of said justices shall be designated as chief justice, and
11 shall preside at joint sessions of said court, if present. In

12 his absence, the senior justice in actual continuous service
13 shall preside.

Sect. 2. The court shall have jurisdiction of cases as
2 hereinafter provided, brought in the counties of Andros-
3 coggin, Cumberland, Kennebec, Oxford, Penobscot and
4 York.

Sect. 3. The court may be held by one or more of the
2 justices; and when so held, shall have and exercise all the
3 power and jurisdiction committed to said court.

Sect. 4. Within said counties, said court has exclusive
2 jurisdiction of civil appeals and of actions removed on
3 motion, from municipal and police courts and trial justices;
4 exclusive original jurisdiction of action of scire facias on
5 judgments and recognizances not exceeding one thousand
6 dollars; of bastardy trials; and of all other civil actions at
7 law not exclusively cognizable by municipal and police courts
8 and trial justices, where the damages demanded do not
9 exceed one thousand dollars, except real actions and actions
10 of trespass quare clausum; and concurrent original juris-
11 diction with the supreme judicial court of actions of trespass
12 quare clausum, of proceedings in habeas corpus; and all
13 other civil actions at law where the damages exceed one
14 thousand dollars.

Sect. 5. In said counties, the court shall have exclusive
2 original and appellate jurisdiction in all criminal matters
3 originally exercised by the supreme judicial court, and shall
4 have all powers incident thereto; and the jurisdiction of the
5 supreme judicial court for the trial of civil and criminal

6 cases in said counties is limited in conformity with the provisions of this act.

Sect. 6. Terms of the court shall be held as follows:

In Androscoggin county, at Auburn, for civil business, 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 February, May and October, together with civil business.

In Cumberland county, at Portland, for civil business, on the first Tuesday 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.

In Kennebec county, at Augusta, for civil business, on the second Tuesday of January, and the first Tuesdays of April and September, and at Waterville on the second Tuesdays of June and November; but the criminal business of said county shall be transacted at the terms held on the second Tuesday of January and the first Tuesdays of April and September, together with civil business.

In Oxford county, at South Paris, on the first Tuesday of January, and at Rumford Falls on the first Tuesdays of May and November, for the transaction of civil and criminal business.

In Penobscot county, at Bangor, for civil business, on the third 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 third Tuesdays of January, May and September.

In York county, at Saco, on the third Tuesdays of November and February, and at Alfred on the second Tuesday of April.

Sect. 7. The court may provide by general rule that certain terms shall be held for the transaction of civil business, without a jury, at which terms any business may be transacted except such as requires a jury. And the chief justice shall assign the justices to hold the several terms of court; and in case of inability of any justice to hold a term of court in accordance with assignment, may designate any other justice to hold said term.

Sect. 8. Actions shall be made returnable at one of the three terms of the counties in which they are brought, next begun and held after the commencement thereof.

Sect. 9. The court shall establish a seal; and all writs and processes issuing therefrom shall be in the name of the state, of the usual forms, bearing the teste of a justice thereof, under the seal of said court. They shall be signed by its clerk, and obeyed and executed throughout the state. A writ issued by the clerk of any of said counties may be made returnable in the superior court in any other county in which the action might be legally brought.

Sect. 10. The clerk for the time being of the supreme judicial court in each of said counties is also clerk of the superior court sitting therein. He shall appoint a deputy, approved by the chief justice of the 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

8 absent or the office is vacant, the justice of the superior court
9 holding a term therein may appoint a clerk for his court
10 during such absence, or until an appointment is made by the
11 governor and council, or by the supreme judicial court.

Sect. 11. The sheriff of each of said counties shall attend
2 the sessions of the superior court therein, unless the supreme
3 judicial court is in session in such county in which case he
4 shall specially designate a deputy, approved by the justice
5 holding such superior court, so to attend. And whenever
6 it happens that such justice is prevented from attending at
7 the time and place at which such court by law or adjourn-
8 ment ought to be held, said sheriff or such deputy shall, by
9 oral proclamation, adjourn said court from day to day, until
10 such justice attends.

Sect. 12. Venires for grand jurors to serve at the terms
2 of said court in the several counties shall be issued at least
3 forty days before the first Tuesday of September in the
4 counties of Androscoggin, Cumberland and Kennebec, and
5 at least forty days before the third Tuesday of November in
6 the county of Oxford, and at least forty days before the third
7 Tuesday of October in the county of Penobscot, annually,
8 and such jurors shall serve at every term of said court for
9 the transaction of criminal business throughout the year.
10 Traverse jurors shall be drawn and returned to serve at the
11 several terms of said court as in the supreme judicial court,
12 except that the same jurors may be required by the justice
13 presiding to serve for two successive terms, and that traverse
14 jurors shall not be drawn and returned for such terms as
15 may be designated by rule of court to be held without a jury.

Sect. 13. If the plaintiff in said court 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 his 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 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 shall be in order for trial at the first term

Sect. 14. Exceptions may be alleged as in the supreme
2 judicial court, and shall, together with all cases upon agreed
3 statement of facts, upon report and motions for new trials,
4 be certified as provided in section forty-four of chapter
5 seventy-nine of the Revised Statutes. And all exceptions
6 arising in cases within the exclusive jurisdiction of said
7 court may be certified at once by the justice presiding to
8 the chief justice of the supreme judicial court, and shall,
9 when so certified, be argued in writing on both sides within
10 thirty days thereafter, unless the justice of such superior
11 court, for good cause, enlarges the time, and exceptions so
12 certified shall be considered and determined by the justices
13 of the supreme judicial court, as soon as may be. Decisions
14 of the law court on all exceptions and questions from said
15 superior court shall be certified to the clerk of the superior
16 court in the county where the case is pending, with the same
17 effect as in cases originating in the supreme judicial court
18 in the county.

Sect. 15. When a demurrer to a declaration is overruled,
2 the defendant, notwithstanding he excepts, may plead anew
3 within such time as the justice orders, but in all cases where
4 exceptions are alleged by the defendant, the action shall,
5 notwithstanding, remain upon the docket of the superior
6 court and be proceeded with as if no exceptions had been
7 taken, until the case is in such a condition that the over-
8 ruling of said exceptions will finally dispose of it. And the
9 action shall then be transferred to the law court, or certified
10 to the chief justice thereof, as hereinbefore provided for the
11 hearing and determination of all exceptions arising in any
12 stage of the case.

Sect. 16. The supreme judicial court, sitting as a court
2 of law, has the same jurisdiction of all questions of law,
3 motions for new trials, and questions arising on reports or
4 agreed statements of facts originating in the superior court,
5 as if they had originated in the supreme judicial court; and
6 said law court has the same jurisdiction of all questions and
7 motions certified thereto from the superior court as herein-
8 before provided. And all provisions of law and rules of
9 the supreme judicial court relative to the transfer of actions
10 and other matters from the supreme judicial court for said
11 county, or from its docket to the docket of said law court,
12 and all provisions of law and rules regulating proceedings
13 in such cases, and the effects of such proceedings apply to
14 the transfer of actions from the superior court or the dockets
15 thereof to said law court, and to the proceedings in such
16 cases and the effect thereof, except so far as they are incon-
17 sistent with the foregoing provisions.

Sect. 17. Said superior court may administer all neces-
2 sary oaths, render judgment and issue execution, punish
3 for contempt and compel attendance, as in the supreme judi-
4 cial court; make all such rules and regulations, not repug-
5 nant to law, as may be necessary and proper for the admin-
6 istration of justice promptly and without delay; and the
7 provisions of law relative to the jurisdiction of the supreme
8 judicial court in each of said counties over parties, the arrest
9 of persons, attachment of property, the time and mode of
10 service of precepts, proceedings in court, the taxation of
11 costs, the rendition of judgments, the issuing, service and
12 return of executions, and all other subjects, apply to the

*

13 superior court in all respects, except so far as they are modi-
14 fied by this chapter; and said superior court is clothed as
15 fully as the supreme judicial court with all the powers nec-
16 essary for the performance of all its duties.

Sect. 18. Final judgments in said superior court may be
2 re-examined in the supreme judicial court on a writ of error,
3 or on petition for review, and when the judgment is reversed,
4 the supreme judicial court shall render such judgment as
5 the superior court should have rendered, and when a review
6 is granted, it shall be tried in said supreme judicial court,
7 which has the same power to grant writs of supersedeas of
8 executions issued from said superior court, as it has of execu-
9 tions issued from the supreme judicial court.

Sect. 19. All exceptions or questions arising in any way
2 during the trial of criminal cases in the superior court shall
3 be transferred to the law docket of the supreme judicial
4 court and have day therein, and if said exceptions are sus-
5 tained, or a new trial is ordered, the cause shall be remanded
6 to the superior court for trial. Motions for a new trial in
7 criminal cases tried in the superior court shall be heard and
8 finally determined by the justice thereof.

Sect. 20. This act shall take effect April first, nineteen
2 hundred and seven. Thereafter, in the counties of Cumber-
3 land and Kennebec, said court shall be held and proceed as
4 heretofore, and jurors summoned therein shall act as if sum-
5 moned under the provisions of this act. In Androscoggin,
6 Oxford, Penobscot and York counties, the civil terms herein
7 provided occurring prior to September, nineteen hundred and

8 seven, shall be held without a jury; and in said counties,
9 civil and criminal matters pending or made returnable as
10 heretofore at any term of the supreme judicial court held
11 prior to September first, nineteen hundred and seven, shall
12 be cognizable by the supreme judicial court. At any term
13 of the supreme judicial court held in the counties of Andros-
14 coggin, Cumberland, Kennebec, Oxford, Penobscot and
15 York after this act takes effect, any action pending therein
16 which would fall within the exclusive jurisdiction of the
17 superior court as herein defined and established, with all
18 papers belonging thereto, and orders and decrees thereon,
19 may, on motion of either party, be transferred from the
20 docket of the supreme judicial court to the docket of the
21 superior court, and entered, tried, and have day therein, as
22 if it had been originally commenced therein, provided that
23 the justice presiding in the supreme judicial court believes
24 that a speedier trial may thus be had. All indictments and
25 informations and all criminal processes pending in said
26 supreme judicial court for the county of Androscoggin at
27 the end of the next April term thereof, for the counties of
28 Oxford and York at the end of the next May terms thereof
29 and for the county of Penobscot at the end of the next
30 August term thereof shall be transferred to the superior
31 court for said counties, and shall be entered upon the docket
32 of the same at the term thereof, in each county, first held
33 therein on or after the first day of September, nineteen
34 hundred and seven, and shall have day therein. And all
35 warrants and recogniances, appeals in criminal cases, and
36 all criminal processes whatever, which, but for the passage

37 of this act, would be returnable to, or which by law would
38 be entered in, said supreme judicial court in said counties,
39 on or after said first day of September, shall be returnable
40 to and entered upon the docket of the superior court in said
41 counties, at the term thereof first held in said counties on
42 or after said first day of September, and shall have day
43 therein. And all witnesses and others in criminal matters
44 who would, but for the passage of this act, be held to appear
45 at said supreme judicial court for said counties at any term
46 thereof held on or after said first day of September, shall
47 also attend at the first term of the superior court in said
48 counties held on or after said first day of September.

Sect. 21. Each justice of the superior court shall receive
2 an annual salary from the treasurer of state, in quarterly
3 payments, on the first days of January, April, July and
4 October, of thirty-five hundred dollars.

Sect. 22. Each justice of the court may appoint a stenog-
2 rapher to report the proceedings thereof, who shall be sub-
3 ject to the provisions of sections one hundred sixty-one,
4 one hundred sixty-two and one hundred sixty-three of chap-
5 ter eighty-four of the Revised Statutes, and shall receive
6 annually a salary from the treasurer of state, in quarterly
7 payments, on the first days of January, April, July and
8 October, of fifteen hundred dollars.

Sect. 23. Sections seventy to ninety-two inclusive, of chap-
2 ter seventy-nine, and section eight of chapter one hundred
3 and sixteen of the Revised Statutes, and all other acts and
4 parts of acts inconsistent herewith, are hereby repealed,
5 except as their effect is preserved in this act, and except that

6 said acts shall remain in force for the preservation of all
7 rights and their remedies existing by virtue of them, and so
8 far as they apply to any office, trust, judicial proceeding,
9 right, contract, limitation or event already affected by them.

Sect. 24. The city of Waterville and the town of Rumford
2 Falls may provide a building and furnish suitable accom-
3 modation for holding the superior court therein, and may
4 raise by assessment or loan and appropriate a sufficient sum
5 of money for the purpose of providing said accommodation
6 for said court.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,
Augusta, February 28, 1905.

Tabled pending reference to a committee by Mr. GOODWIN of San-
ford, and ordered printed.

E. M. THOMPSON, *Clerk*.