

# MAINE STATE LEGISLATURE

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# EIGHTY-THIRD LEGISLATURE

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**Senate Document**

**No. 31**

S. P. 89

In Senate, Feb. 2, 1927.

Referred to Committee on Judiciary and 1000 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Oakes of Cumberland.

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## STATE OF MAINE

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

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AN ACT Conferring Jurisdiction in Matters of Divorce,  
Annulment of Marriage, Care and Custody of Children and  
Support of Children and Wives on the Probate Courts.

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Be it enacted by the People of the State of Maine, as follows:

Section 1. Hereafter, exclusive original jurisdiction in all  
2 matters relating to divorce and annulment of marriage and  
3 the care, support, and custody of children, except in matters  
4 criminal in their nature, and now vested in either the mu-  
5 nicipal courts of the state, the Superior Courts or Supreme  
6 Judicial Courts shall be vested in the Probate Court in the  
7 county in which any one of the interested parties resides,  
8 with a right of appeal from any order or decree of the

9 Probate Court to the term of the Circuit Court in the  
10 counties of Androscoggin, Cumberland, Kennebec, and  
11 Penobscot, and to the term of the Circuit Court or Supreme  
12 Judicial Court, next to be held in any county other than  
13 Androscoggin, Cumberland, Kennebec, and Penobscot,  
14 thirty-four days after the entry in the Probate Court of the  
15 order or decree appealed from.

No appeal, shall, however, lie to any ruling of the Probate  
2 Court on a motion of a dilatory nature or to any inter-  
3 locutory order or decree, but an exception seasonably taken  
4 to any such ruling, order or decree shall await final action  
5 by the Probate Court on the petition or libel for divorce or  
6 for annulment, in connection with which such ruling, order  
7 or decree is made, and may be considered in the appellate  
8 court on appeal from any final order or decree in the case;  
9 and such order or decree or judgment may be entered in the  
10 said appellate court as the law and the right of the parties  
11 may require.

Sect. 2. Judges of Probate shall have all the powers in  
2 connection with divorce, annulment of marriage, support,  
3 and custody of children, and support of wives pending hear-  
4 ing on a libel, of alimony and the support of a divorced  
5 wife, and the care, custody and support of children after  
6 divorce as is conferred on the Supreme Judicial Court or  
7 either of the Superior Courts under chapter sixty-five of  
8 the Revised Statutes, except trial by jury and granting of  
9 new trial under section eleven of said chapter sixty-five of

10 the Revised Statutes, and may enter judgments and enforce  
11 their orders and decrees by any appropriate processes.

Sect. 3. Where there is an appearance by the libellee and  
2 a trial by jury is requested by either party, a libel for di-  
3 vorce or annulment of marriage shall be forthwith trans-  
4 ferred to the docket of the Circuit Court in either of the  
5 counties of Androscoggin, Cumberland, Kennebec and  
6 Penobscot and to the docket of either the Circuit or the Su-  
7 preme Judicial Court in either of the counties other than  
8 Androscoggin, Cumberland, Kennebec, and Penobscot,  
9 where such libel is pending, to be there heard and deter-  
10 mined as though originating in said court, except as to any  
11 orders made in the Probate Court as to support of wife or  
12 support or custody of children, which shall remain in force  
13 until otherwise ordered by a Judge of said Circuit or Su-  
14 preme Judicial Court. A case transferred to the Circuit or  
15 Supreme Judicial Court for a jury trial, however, must be  
16 heard before a jury at the same term at which it is entered  
17 on the docket of said Court, unless continued for good cause  
18 shown, or shall be remanded back to the Probate Court from  
19 whence it came for hearing below.

Sect. 4. On appeal to the Circuit or the Supreme Judicial  
2 Court, all hearings shall be *de novo*, as though no action  
3 had been taken in the court below, which Circuit Court on  
4 appeal shall have all the powers now vested in the Supreme  
5 Judicial Court under chapter sixty-five of the Revised  
6 Statutes; the parties in case of a libel for divorce or annul-

7 ment of marriage on appeal to have the same right to jury  
8 trial in the Circuit or Supreme Judicial Court and with the  
9 same effect as they now have under section eight of chapter  
10 sixty-five of the Revised Statutes.

Sect. 5. All notices of appeals under this act shall be  
2 filed in the Probate Court within twenty days from the date  
3 of the order or decree appealed from. Within the time  
4 limited for claiming the appeal, the appellant, if ordered  
5 by the Judge of Probate, shall file in the Probate office his  
6 bond to the adverse party or to the Judge of Probate for  
7 the benefit of the adverse party for such sum and with such  
8 sureties as the Judge approves, conditioned to prosecute his  
9 appeal and to pay all intervening costs and damages and  
10 such costs as the Circuit or Supreme Judicial Court taxes  
11 against him. Fourteen days at least before the sitting of  
12 the appellate court, he shall serve on the appellee a copy  
13 of his notice of appeal attested by the Register of Probate.

Sect. 6. If the appellant fails to enter his appeal, at the  
2 next term of the appellate court held after thirty-four days  
3 from the date of the decree from which the appeal is taken,  
4 the appeal shall be deemed to be withdrawn and the order  
5 and decree of the Probate Court shall become final. The  
6 Register of the Probate Court shall transmit to the appellate  
7 court any deposition relating to the matter appealed from  
8 that had been filed in the Probate Court, and the same may  
9 be used in the appellate court.

Sect. 7. Such appeals shall be cognizable at the next term

2 of the Circuit Court in the counties of Androscoggin, Cum-  
3 berland, Kennebec, and Penobscot and in all other counties  
4 than Androscoggin, Cumberland, Kennebec, and Penobscot  
5 at the next term of the Circuit or Supreme Judicial Court  
6 held after the expiration of thirty-four days from the date  
7 of the proceedings appealed from.

Sect. 8. In all contested cases in the original or appellate  
2 court, costs may, in the discretion of the court, be allowed  
3 to either party, to be paid by the other and executions may  
4 be issued therefor as in courts of common law.

Sect. 9. The right to grant a new trial in case of a divorce  
2 under section eleven of chapter sixty-five of the Revised  
3 Statutes shall remain vested in the Supreme Judicial Court.

Sect. 10. The procedure in the several Probate Courts  
2 in such matters shall, so far as may be, conform to the  
3 provisions of chapter sixty-five of the Revised Statutes.  
4 The several Judges, or a majority of them, of the Probate  
5 Courts may adopt uniform rules governing the procedure  
6 in such matters in the Probate Courts.

Sect. 11. Writs of summons and attachment and trustee  
2 writs in the usual form under seal of the Court and bearing  
3 the teste of the Judge may be issued out of the Probate  
4 Courts in which a libel for divorce may be inserted and real  
5 or personal property attached to respond to the decrees of  
6 said Courts under this act. A libellee may give bond to  
7 release any such attachment as on writs issued out of the  
8 Supreme Judicial Court. Service of such writs shall be

9 made as provided in section three of chapter sixty-five of  
10 the Revised Statutes.

Sect. 12. All acts and parts of acts inconsistent herewith  
2 are hereby repealed.