

MAINE STATE LEGISLATURE

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EIGHTY-THIRD LEGISLATURE

Senate Document

No. 35

S. P. 87

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.

STATE OF MAINE

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

AN ACT to Create a Circuit Court and Determine Its Jurisdiction, and Assign the Terms of said Court, and also the Terms of the Supreme Judicial Court at *nisi prius* and as a Court of Law.

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

Section 1. The Superior Courts for the counties of Androscoggin, Cumberland, Kennebec, and Penobscot are hereby abolished and a Circuit Court is established, to consist of five Justices, learned in the law, to be appointed, commissioned, and qualified as provided in the Constitution.

Sect. 2. Said Court shall have a seal, and all writs and processes issued therefrom shall be in the name of the state, of the usual forms, bearing the teste of one of said Justices,

4 and shall be returnable in any county in which the action
5 may be brought; they shall be obeyed and executed through-
6 out the state.

Sect. 3. Said Court in the counties of Androscoggin, Cum-
2 berland, Kennebec, and Penobscot shall have exclusive juris-
3 diction of all civil appeals from municipal and police courts
4 and trial justices; and exclusive jurisdiction of actions of
5 *scire facias*, on judgments and recognizances not exceeding
6 one thousand dollars, of bastardy trials, and all other civil
7 actions at law not exclusively cognizable by municipal and
8 police courts or trial justices when the damages do not
9 exceed one thousand dollars, and concurrent jurisdiction in
10 said counties with the Supreme Judicial Court in all matters
11 at law, including complaints for flowage, real actions, parti-
12 tion of real estate, actions of trespass *quare clausum* and
13 proceedings in *habeas corpus*, but excepting the issuing of
14 writs of prohibition, error, *mandamus quo warranto*, and
15 *certiorari*. It shall also in the counties above named have
16 exclusive jurisdiction both original and appellate of all
17 criminal matters heretofore vested in the several Superior
18 Courts located in said counties.

Sect. 4. All indictments, informations, actions of *scire*
2 *facias*, and all criminal processes whatsoever, and all writs,
3 petitions, libels, and civil processes of whatsoever nature,
4 pending in either the Superior Courts of said counties of
5 Androscoggin, Cumberland, Kennebec, and Penobscot shall
6 be transferred upon this Act taking full effect to the docket

7 in the respective counties of the Circuit Court hereby es-
8 tablished, and shall be entered upon the docket of the same
9 at the first term thereof next to be held after this Act
10 taking full effect, and shall have day therein, and all war-
11 rants and recognizances, appeals in criminal cases and all
12 criminal processes whatsoever which but for the passage
13 of this Act would be returnable to, or which by law would
14 be entered in, either Superior Courts of said counties at
15 the next term after January 1st, 1928, shall be returnable
16 to and be entered in the term of the Circuit Court next
17 held in the county where such processes are returnable after
18 said January 1st, 1928, and shall have day therein; and all
19 grand jurors, witnesses, and others in any criminal matters,
20 including any person under bail, who would but for the
21 passage of this Act be held to appear at the next term of the
22 Superior Court to be held in either of said counties shall be
23 held to appear at the next term of the Circuit Court to be
24 held in the same county in which appearance was required.

Sect. 5. In the several counties in the state, other than
2 those above named, said Circuit Court shall have concurrent
3 jurisdiction with the Supreme Judicial Court, both original
4 and appellate, in all matters at law, both criminal and civil,
5 including complaints for flowage, real actions, partition of
6 real estate, actions of trespass *quare clausum* and proceed-
7 ings in *habeas corpus*, but excepting the issuing of writs of
8 prohibition, error, mandamus, *quo warranto* and *certiorari*
9 and Probate appeals in all matters over which Probate

10 Courts had jurisdiction prior to January 1st, 1928; and all
11 powers incident thereto are hereby conferred upon said
12 Circuit Court in each of said counties, which Court shall
13 exercise the same in the same manner as heretofore author-
14 ized by law to be exercised by the Supreme Judicial Court
15 in said counties.

Sect. 6. All indictments, informations, actions of *scire*
2 *facias* and all criminal processes whatsoever of which juris-
3 diction is by this Act vested in said Circuit Court and now
4 pending in the Supreme Judicial Court in either of the
5 counties other than Androscoggin, Cumberland, Kennebec,
6 and Penobscot shall be transferred to said Circuit Court,
7 and shall be entered upon the docket of the same at the next
8 term held after January 1st, A. D. 1928, and shall have day
9 therein, unless the first term held in any of said counties
10 after this Act shall take full effect shall be a term of the
11 Supreme Judicial Court.

All warrants, recognizances, appeals in criminal cases and
2 all criminal processes whatsoever and all appeals in civil
3 cases and all writs, petitions, libels, and civil processes what-
4 soever, of which the Circuit Court has jurisdiction and
5 which, but for the passage of this Act, would be returnable
6 to, or which by law would be entered in the Supreme Judi-
7 cial Court in any county other than Androscoggin, Cumber-
8 land, Kennebec, and Penobscot shall be returnable to and
9 be entered upon the docket of said Circuit Court at the first
10 term thereof held after this Act shall have taken full effect,

11 unless in any county under the provisions of this Act a term
12 of the Supreme Judicial Court shall be the first term to be
13 held within said county after this Act shall have taken full
14 effect. All grand jurors, and witnesses and other parties in
15 criminal matters, including any person under bail, who
16 would, but for the passage of this Act, be held to appear
17 at a term of the Supreme Judicial Court in any county other
18 than Androscoggin, Cumberland, Kennebec, and Penobscot,
19 shall be held to appear at the term of said Circuit Court
20 next to be held in the same county in which appearance was
21 required after this Act shall be in full effect, unless the first
22 term to be held after this Act shall be in full effect in any
23 county shall be a term of the Supreme Judicial Court.

Sect. 7. All writs out of said Circuit Court in the county
2 of Cumberland shall be made returnable at one of the next
3 three terms of said Court begun and held after the issuing
4 thereof. No writ or other process issued out of said Cir-
5 cuit Court shall be made returnable in any county at a term
6 to be held more than seven months after the date of the
7 writ or process.

Sect. 8. The Clerk of the Supreme Judicial Court in each
2 county shall act as the Clerk of the Circuit Court. In the
3 county of Cumberland, the deputy clerk, if his appointment
4 has been approved by a resident Justice of said Circuit
5 Court or by the Chief Justice of the Supreme Judicial Court,
6 may, whenever the Supreme Judicial Court and said Circuit
7 Court are both in session at the same time or whenever

8 directed by the clerk, act as clerk of the Circuit Court in
9 that county.

Sect. 9. Venires for grand jurors in the counties of An-
2 droscoggin, Cumberland, Kennebec, and Penobscot to serve
3 at the September term of the Circuit Court and venires for
4 grand jurors in the several counties, other than Androscog-
5 gin, Cumberland, Kennebec, and Penobscot, to serve at the
6 September term, whether of the Supreme Judicial or of said
7 Circuit Court, or the first term of either of said courts held
8 in any county other than the counties of Androscoggin,
9 Cumberland, Kennebec, and Penobscot after the thirty-first
10 day of August in each year shall be issued annually by each
11 clerk of his respective county forty days at least before the
12 first criminal term to be held in said county after the thirty-
13 first day of August of each year, and, except as hereinafter
14 provided, the grand jurors shall serve at each term whether
15 of the Supreme Judicial Court or Circuit Court held for the
16 transaction of the criminal business in each of such counties
17 during the year. Venires for traverse jurors in all the
18 counties shall be seasonably issued before each term of
19 court, whether of the Supreme Judicial Court or Circuit
20 Court, and at such other times as the Court orders. The
21 provision for drawing jurors both grand jurors and traverse
22 jurors in the Supreme Judicial Court shall apply to those
23 drawn for the Circuit Court.

Sect. 10. Except as inconsistent with the provisions of
2 this Act, sections ninety, ninety-three, ninety-five, ninety-six,

3 ninety-seven, ninety-eight as amended, and one hundred of
4 chapter eighty-two of the Revised Statutes, and all of the
5 provisions of chapter eighty-seven of the Revised Statutes,
6 shall be applicable to the Circuit Court hereby established.
7 When a person legally served does not appear by himself
8 or his attorney within the first three days of the term, he
9 shall be defaulted as in the Supreme Judicial Court.

Sect. 11. Terms of the Circuit Court shall be held in
2 Cumberland County at Portland for civil business on the
3 first Tuesday of each month, except the months of February,
4 June, July, and August, but the criminal business in said
5 county shall be transacted at the terms held on the first
6 Tuesdays of January, May, and September, together with
7 civil business.

Sect. 12. Terms of said Circuit Court shall be held in
2 Androscoggin at Auburn on the first Tuesdays of January,
3 March, September, and December for civil business; crimi-
4 nal business in said county to be transacted at the terms
5 held on the first Tuesdays of March, September, and De-
6 cember, together with civil business.

Sect. 13. Terms of said Circuit Court shall be held in
2 Kennebec County at Augusta on the first Tuesdays of Jan-
3 uary, May, and September, for both civil and criminal busi-
4 ness.

Sect. 14. Terms of said Circuit Court shall be held in
2 Penobscot County at Bangor on the first Tuesdays of Jan-
3 uary, April, September, and November. The criminal busi-

4 ness in said county shall be transacted at the January, April,
5 and September terms, together with civil business.

Sect. 15. Terms of said Circuit Court shall be held annu-
2 ally in the following counties at the times and places here-
3 inafter specified for the trial of civil actions and persons
4 accused of offenses, and transaction of all other business
5 within the jurisdiction of said Court; the Justices thereof
6 to be assigned annually by the Chief Justice of the Supreme
7 Judicial Court in such manner as to divide their services
8 as equally as may be.

Aroostook: At Caribou on the second Tuesday of Febru-
2 ary for civil business only, and at Houlton on the first
3 Tuesday of November.

Franklin: At Farmington on the second Tuesday of
2 February and October.

Hancock: At Ellsworth on the fourth Tuesday of April.

Knox: At Rockland on the second Tuesday of February
2 and the first Tuesday of October.

Lincoln: At Wiscasset on the second Tuesday of May.

Oxford: At Paris on the second Tuesday of February
2 and at Rumford on the third Tuesday of May.

Piscataquis: At Dover-Foxcroft on the second Tuesday
2 of September.

Sagadahoc: At Bath on the first Tuesday of March and
2 November.

Somerset: At Skowhegan on the second Tuesday of Jan-
2 uary and the first Tuesday of October.

Waldo: At Belfast on the third Tuesday of April, and
2 the first Tuesday of October.

Washington: At Machias on the fourth Tuesday of March
2 and at Calais on the first Tuesday of November.

York: At Alfred on the first Tuesday of May.

Sect. 16. The Justices of the said Circuit Court may
2 adopt rules governing the proceedings in the said Circuit
3 Court, but until such time, the rules of the Supreme Judicial
4 Court shall govern the proceedings, except as inconsistent
5 with this Act.

Sect. 17. Whenever any equitable defense is pleaded in
2 any action pending in said Circuit Court under sections 15-
3 22 of chapter eighty-seven of the Revised Statutes, the Cir-
4 cuit Court shall have jurisdiction to try the cause and the
5 same powers in the matter as the Supreme Judicial Court
6 would have under the sections above referred to if the
7 matter were transferred to that Court.

Sect. 18. Section fifty-one of chapter eighty-two is hereby
2 repealed, and the following enacted in its place:

'Sect. 51. For the trial of civil actions and persons accused
2 of offenses, and for the transaction of all other business,
3 except cases named in section forty-six, terms of the Su-
4 preme Judicial Court shall be held annually by one Justice,
5 and the Justices shall so hold said terms under the direc-
6 tion of the Chief Justice, and be assigned so that, except in
7 emergencies, no Justice shall sit at *nisi prius* two years in
8 succession.

'In Androscoggin: At Auburn on the first Tuesday of
2 April and October.

'Aroostook: At Houlton on the first Tuesday of April and
2 at Caribou on the second Tuesday of September. At the
3 September term, any Justice of said Court on request of the
4 county attorney, or upon his own motion, may direct the
5 clerk to summon the grand jury to attend at that term, and
6 may hear and dispose of any indictments found by the grand
7 jury at said term. All criminal matters entered at said term
8 on appeal may be heard and disposed of at said term. All
9 recognizances from municipal or police courts and trial
10 justices in which parties are held to await the action of the
11 grand jury and made returnable at said September term
12 shall, when no grand jury is in attendance, be continued and
13 by order of Court be transferred to the docket of the Circuit
14 Court in said county to have day at the next term of the
15 Circuit Court held in said county.

'Cumberland: At Portland on the third Tuesday of Jan-
2 uary and April, and on the second Tuesday of October.

'Franklin: At Farmington on the fourth Tuesday of May.
2 The May term shall be held without a grand jury and with
3 but one traverse jury, unless a Justice of the Court shall
4 otherwise specifically order, in which case the clerk shall
5 send venires to such additional traverse jurors as the Justice
6 assigned to preside at said term shall retire, and shall sum-
7 mon the grand jury sitting at the preceding term of the
8 Circuit Court. Any indictments found by the grand jury,

9 if summoned, and all criminal matters entered at said term
10 on appeal may be heard and disposed of at said term. All
11 recognizances from municipal or police courts and trial
12 justices in which parties are held to await the action of the
13 grand jury and made returnable at said May term shall,
14 when no grand jury is in attendance, be continued and by
15 order of Court be transferred to the docket of the Circuit
16 Court in said county to have day at the next term of the
17 Circuit Court held in said county.

‘Hancock: At Ellsworth on the first Tuesday of Novem-
2 ber.

‘Kennebec: At Augusta on the third Tuesday of March
2 and first Tuesday of November.

‘Knox: At Rockland on the first Tuesday of May.

‘Lincoln: At Wiscasset on the first Tuesday of November.

‘Penobscot: At Bangor on the second Tuesday of March
2 and first Tuesday of October.

‘Piscataquis: At Dover-Foxcroft on the fourth Tuesday
2 of March.

‘Sagadahoc: At Bath on the first Tuesday of June. The
2 June term shall be held without a grand jury, unless on
3 request of the county attorney or by order of the Justice
4 presiding, the grand jury sitting at the preceding term of
5 the Circuit Court be summoned to attend, and all indict-
6 ments found by said grand jury may be heard and disposed
7 of at said term. All other criminal matters entered at said
8 term on appeal may be heard and disposed of at said term.

9 All recognizances from municipal or police courts and trial
10 justices in which parties are held to await the action of the
11 grand jury and made returnable at said June term shall,
12 when no grand jury is in attendance, be continued and by
13 order of Court be transferred to the docket of the Circuit
14 Court in said county to have day at the next term of the
15 Circuit Court held in said county.

‘Somerset: At Skowhegan on the second Tuesday of May.

‘Waldo: At Belfast on the second Tuesday of January.

2 The January term shall be held without a grand jury, unless
3 on request of the county attorney or by order of the Justice
4 presiding, the grand jury sitting at the preceding term of
5 the Circuit Court be summoned to attend, and all indict-
6 ments found by said grand jury may be heard and disposed
7 of at said term. All other criminal matters entered at said
8 term on appeal may be heard and disposed of at said term.
9 All recognizances from municipal or police courts and trial
10 justices in which parties are held to await the action of the
11 grand jury and made returnable at said January term shall,
12 when no grand jury is in attendance, be continued and by
13 order of Court be transferred to the docket of the Circuit
14 Court in said county to have day at the next term of the
15 Circuit Court held in said county.

‘Washington: At Machias on the first Tuesday of June.

2 The June term shall be held without a grand jury, unless
3 on request of the county attorney or by order of the Justice
4 presiding, the grand jury sitting at the preceding term of

5 the Circuit Court be summoned to attend, and all indict-
6 ments found by said grand jury may be heard and disposed
7 of at said term. All other criminal matters entered at said
8 term on appeal may be heard and disposed of at said term.
9 All recognizances from municipal or police courts and trial
10 justices in which parties are held to await the action of the
11 grand jury and made returnable at said June term shall,
12 when no grand jury is in attendance, be continued and by
13 order of Court be transferred to the docket of the Circuit
14 Court in said county to have day at the next term of the
15 Circuit Court held in said county.

'York: At Saco on the second Tuesday of January and
2 at Alfred on the first Tuesday of September.'

Sect. 19. All appeals from municipal or police courts and
2 trial justices in any county other than Androscoggin, Cum-
3 berland, Kennebec, and Penobscot, both in civil and crimi-
4 nal matters, shall be to the next term of the Circuit held
5 in such county; but in all cases where the next term held
6 in any county following an appeal is a term of the Supreme
7 Judicial Court, such appeal shall be to and be entered in
8 said Supreme Judicial Court. All such appeals shall be
9 in order for trial at the first term.

Sect. 20. At any term of the Supreme Judicial Court held
2 in any county other than Androscoggin, Cumberland, Ken-
3 nebec, and Penobscot, either party by filing a motion on
4 the first day of the term may have any civil action or matter,
5 and the county or state's attorney or a respondent, by like

6 proceeding, may have any complaint, indictment or criminal
7 process or matter, pending in the Circuit Court in the same
8 county, transferred from the docket of the Circuit Court
9 to the docket of the Supreme Judicial Court and be heard
10 and tried and have day therein at said term.

Sect 21. At the adjournment of each term of the Su-
2 preme Judicial Court in any county other than Androscog-
3 gin, Cumberland, Kennebec, and Penobscot, by order of
4 Court, all civil and criminal actions or matters whatsoever
5 not finally disposed of at said term, unless marked "law"
6 on the docket of said Court, and of which the Circuit Court
7 under this Act has jurisdiction, may be transferred to the
8 docket of said Circuit Court in the same county and have
9 day therein.

Sect. 22. Section forty-one of chapter eighty-two of the
2 Revised Statutes is hereby amended so as to read as follows:

'Sect. 41. Five members of the Supreme Judicial Court,
2 to be annually designated by the Chief Justice, shall here-
3 after sit as a Court of Law, and shall hear and determine
4 all questions of law arising in suits at law and in equity and
5 in criminal trials and proceedings and in all civil actions in
6 which there is a subsisting verdict. If a majority of all the
7 Justices qualified to act on the case after mature consid-
8 eration do not concur in granting a new trial, the Court shall
9 order judgment on the verdict.

'If any one Justice shall be disqualified for any reason to
2 sit in any case presented to said Court of Law, the remain-

3 ing Justices so assigned shall hear such case and the con-
4 currence of all the remaining Justices shall be sufficient to
5 decide such case. In case of illness or other emergency, or
6 if more than one Justice shall be disqualified to sit in any case
7 presented to said Court of Law, the Chief Justice shall then
8 call in to sit one or more of the Justices of said Supreme
9 Judicial Court or of the Active Retired Justices of said
10 Court.

‘The unanimous consent of all the Justices sitting in said
2 Court of Law shall be necessary to the decision of any case.
3 In cases of disagreement, the case shall be forwarded to all
4 the other Justices of the Supreme Judicial Court for their
5 consideration, in which case the concurrence of a majority
6 of all the Justices qualified to sit upon the case shall be
7 sufficient to decide the case.’

Sect. 23. Section forty-three of chapter eighty-two of the
2 Revised Statutes is hereby amended so as to read as follows:

‘Sect. 43. Sessions of the Court as a Court of Law shall
2 be holden at Portland on the first Tuesday of January,
3 April, June, and November; at Augusta on the first Tues-
4 day of February, May, October, and December, and at
5 Bangor on the first Tuesday of March, and September.
6 Meetings of the Justices may also be held at such times and
7 places as the Chief Justice shall appoint for the consid-
8 eration and determination of all cases and questions before
9 submitted and not determined.’

Sect. 24. Any Justice of the Superior Courts in either

2 of the counties of Androscoggin, Cumberland, Kennebec,
3 and Penobscot on being appointed as a Justice of the Circuit
4 Court shall be eligible to retire as a member of the Circuit
5 Court upon the same conditions provided for the retirement
6 of the Justices of the Superior Court under section seven
7 of chapter one hundred and seventeen of the Revised Stat-
8 utes as amended by chapter forty-seven of the Public Laws
9 of 1923, and the period of service as a Justice of either of
10 said Superior Courts and of said Circuit Court shall be
11 regarded as the same as continuous service in said Circuit
12 Court in fulfilling the conditions as to length of time of
13 service essential to his appointment as an Active Retired
14 Justice of said Circuit Court or to his receiving the com-
15 pensation provided by said section either as an Active Re-
16 tired Justice or as a Retired Justice of said Court.

Sect. 25. Any Active Retired Justice or Retired Justice
2 of either of the Superior Courts of Androscoggin, Cumber-
3 land, Kennebec or Penobscot shall be entitled to the same
4 compensation as a retired Justice of the Circuit Court and
5 be eligible to appointment as an Active Retired Justice of
6 said Circuit Court, and may be assigned by the Chief
7 Justice of the Supreme Judicial Court to sit at any term
8 of the Circuit Court with the same authority and powers
9 as though he were a regular Justice of said Circuit Court,
10 and whenever said Chief Justice so orders may hear all
11 matters, and issue all orders, notices, decrees, and judg-

12 ments in vacation that any Justice of said Circuit Court is
13 authorized to hear and issue.

Sect. 26. Section one hundred and two and one hundred
2 and three of chapter eighty-two of the Revised Statutes is
3 hereby amended by substituting in said sections the word
4 'Circuit' for the word "Superior" wherever the latter word
5 appears.

Sect. 27. The Chief Justice may once each year call to-
2 gether the several Justices of the Circuit Court at such
3 place as he may appoint for conference as to the conduct
4 and dispatch of judicial business, and interchange of views
5 in matters of practice in said Court. In addition to their
6 salaries and expenses in holding the several terms of Court
7 to which they are assigned, the several Judges of said
8 Court shall be entitled to their actual cash disbursements in
9 attending such conference.

Sect. 28. All acts or parts of acts inconsistent herewith
2 are hereby repealed.

Sect. 29. This act shall not take effect, except as to the
2 appointment of the Justices of the Circuit Court, until Jan-
3 uary 1st, 1928. The appointment of such Justices may be
4 made at any time after ninety days from the adjournment
5 of the 83rd Legislature, to take effect January 1st, 1928.

SCHEDULE

TERMS OF SUPREME AND CIRCUIT COURT IN RESPECTIVE COUNTIES

CIRCUIT MARKED 1
SUPREME MARKED X

Figure in () indicates the week of the month

	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.	Total
Andro....	(1) 1	(1) 1	(1) X				(1) 1	(1) X	(1) 1		6
Aroos....		(2) 1	(1) X				(2) X		(1) 1		4
Cumb....	(1) 1 (3) X	(1) 1	(1) 1 (3) X	(1) 1			(1) 1	(2) 1 (2) X	(1) 1	(1) 1	11
Frank....		(2) 1			(3) X			(2) 1			3
Hancock..				(4) 1					(1) X		2
Ken....	(1) 1	(3) X			(1) 1		(1) 1		(1) X		5
Knox....		(2) 1			(1) X			(1) 1			3
Lincoln..					(2) 1				(1) X		2
Oxford...		(2) 1			(3) 1		(4) X				3
Penob....	(1) 1	(2) X	(1) 1				(1) 1	(1) X	(1) 1		6
Piscat....			(4) X				(2) 1				2
Sagadahoc			(1) 1			(1) X			(1) 1		3
Somerset	(2) 1				(2) X			(1) 1			3
Waldo....	(2) X			(3) 1				(1) 1			3
Wash....			(4) 1			(1) X			(1) 1		3
York....	(2) X				(1) 1		(1) X				3
Circuit. .	5	4	4	4	5	0	5	5	5	2	39
Supreme .	3	0	3	3	3	2	3	3	3	0	23

LAW COURT TERMS: Portland—First Tues. January, April, June, November.
 Augusta—First Tues. February, May, October, December.
 Bangor—First Tues. March, September.