

# MAINE STATE LEGISLATURE

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NEW DRAFT

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EIGHTY-THIRD LEGISLATURE

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Senate Document

No. 260

S. P. 519

In Senate, March 22, 1927.

Tabled by Mr. Maher of Kennebec pending consideration.  
New draft ordered printed.

ROYDEN V. BROWN, Secretary.

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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 Concurrent Jurisdiction in Matters of  
Divorce, Annulment of Marriage, Care and Custody of Chil-  
dren 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, concurrent jurisdiction in all mat-  
2 ters relating to divorce and annulment of marriage and the  
3 care, support, and custody of children, except in matters  
4 criminal in their nature, now vested in the municipal courts  
5 of the state, the superior courts or supreme judicial courts  
6 shall be vested in the probate court in the county in which  
7 any one of the interested parties resides, with a right of  
8 appeal from any order or decree of the probate court to

9 the term of the superior court in the counties of Andro-  
10 scoggin, Cumberland, Kennebec, and Penobscot, and to the  
11 term of the supreme judicial court, next to be held in any  
12 county other than Androscoggin, Cumberland, Kennebec,  
13 and Penobscot, thirty-four days after the entry in the pro-  
14 bate court of the 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 interlocu-  
3 tory order or decree, but an exception seasonably taken to  
4 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  
10 the said appellate court as the law and the right of the  
11 parties 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 any one 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 divorce  
3 or annulment of marriage shall be forthwith transferred  
4 to the docket of the superior court in either of the coun-  
5 ties of Androscoggin, Cumberland, Kennebec and Penob-  
6 scot and to the docket of the supreme judicial court in any  
7 of the counties other than Androscoggin, Cumberland, Ken-  
8 nebec and Penobscot, where such libel is pending, to be  
9 there heard and determined as though originating in said  
10 court, except as to any orders made in the probate court  
11 as to support of wife or support or custody of children,  
12 which shall remain in force until otherwise ordered by a  
13 judge of said superior or supreme judicial court. A case  
14 transferred to the superior or supreme judicial court for a  
15 jury trial, however, must be heard before a jury at the same  
16 term at which it is entered on the docket of said court, un-  
17 less continued for good cause shown, or shall be remanded  
18 back to the probate court from whence it came for hearing  
19 below.

Sect. 4. On appeal to the superior or the supreme judi-  
2 cial court, all hearings shall be de novo, as though no action  
3 had been taken in the court below; the parties in case of  
4 a libel for divorce or annulment of marriage on appeal to  
5 have the same right to jury trial in the superior or supreme  
6 judicial court and with the same effect as they now have  
7 under section eight of chapter sixty-five of the revised stat-  
8 utes.

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 superior 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 superior court in the counties of Androscoggin, Cam-  
3 berland, Kennebec, and Penobscot and in all other coun-  
4 ties than Androscoggin, Cumberland, Kennebec, and Penob-  
5 scot at the next term of the supreme judicial court held

6 after the expiration of thirty-four days from the date of  
7 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 in  
2 such matters shall, so far as may be, conform to the pro-  
3 visions of chapter sixty-five of the revised statutes. The  
4 several judges, or a majority of them, of the probate courts  
5 may adopt uniform rules governing the procedure in such  
6 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 made  
9 as provided in section three of chapter sixty-five of the  
10 revised statutes.

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