

# MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

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Senate Document

No. 140

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S. P. 305.

In Senate, Feb. 6, 1929.

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-NINE

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AN ACT to Create a Circuit Court.

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

Section 1. Section one of chapter eighty-two of the re-  
vised statutes is hereby amended so that said section as  
amended shall read as follows:

'Section 1. *Constitution of the Court.* The supreme judi-  
cial court shall consist of a chief justice and seven associate  
justices and such active retired justices as may be appointed  
and serving on said court, learned in the law and of sobriety  
of manners.

Vacancies occurring after the passage of this act shall re-  
main unfilled until the number of associate justices is re-

3 duced to five and thereafter the court shall consist of a chief  
4 justice and five associate justices and such active retired  
5 justices as may be appointed and serving on said court.'

Sect. 2. *Jurisdiction of the Supreme Judicial Court.* The  
2 supreme judicial court shall exercise all of the jurisdiction,  
3 powers, duties and authority now vested in such court sit-  
4 ting as a law court and such other jurisdiction as is herein  
5 provided.

Sect. 3. Section forty-one of chapter eighty-two is here-  
2 by amended so that said section, as amended, shall read as  
3 follows:

'Sect. 41. *Concurrence Required in Civil Cases.* When sit-  
2 ting as a law court to determine questions of law arising  
3 in suits at law or in equity and in criminal trials and pro-  
4 ceedings, the supreme judicial court shall be composed of  
5 five or more of the justices who shall hear and determine  
6 such questions by the concurrence of four members. In  
7 any civil action in which there is a subsisting verdict, if  
8 four of the justices qualified to act in the case, after mature  
9 consideration and consultation, do not concur in granting a  
10 new trial, the court shall render judgment on the verdict.'

Sect. 4. Section twenty-eight of chapter one hundred  
2 thirty-six of the revised statutes is hereby amended so that  
3 said section, as amended, shall read as follows:

'Sect. 28. *Appeal in Criminal Cases.* If a motion for a  
2 new trial in any case, in which a person has been convicted  
3 of any offense for which the punishment is imprisonment

4 for life, is denied by the justice before whom the same is  
5 heard, the respondent may appeal from said decision to  
6 the next law term of the supreme judicial court; and if  
7 three justices concur the motion shall be granted. In all  
8 other criminal cases amounting to a felony, where like mo-  
9 tion is filed and appeal taken to the law court the concur-  
10 rence of four of the justices shall be necessary to grant  
11 such motion, and sentence shall be imposed upon convic-  
12 tion, either by verdict or demurrer.'

Sect. 5. Section forty-three of chapter eighty-two of the  
2 revised statutes is hereby amended so that said section as  
3 amended shall read as follows:

'Sect. 43. *Sessions of Law Court.* For the purpose of the  
2 law court the state shall constitute one district. The court  
3 shall hold nine sessions each year. The time and places of  
4 holding the sessions of the court shall be determined by the  
5 chief justice and announced before December first of each  
6 year.'

Sect. 6. *Circuit Court.* The superior courts for the coun-  
2 ties of Androscoggin, Cumberland, Kennebec and Penob-  
3 scot are hereby abolished and a circuit court is hereby es-  
4 tablished, to consist of seven justices, learned in the law  
5 and of sobriety of manners, to be appointed, commissioned  
6 and qualified as provided in the constitution. The chief  
7 justice of the supreme judicial court shall assign the jus-  
8 tices of the circuit court to hold the trial terms of said  
9 court. When in the opinion of the chief justice of the su-

10 preme judicial court it becomes necessary, and he so orders,  
11 the circuit court in any county may be held by any justice  
12 of the supreme judicial court or by any active retired jus-  
13 tice of the supreme judicial court or of the circuit court,  
14 or a session of said court may be held by such justice sep-  
15 arate from the one presided over by the justice of the cir-  
16 cuit court during the same term,

Sect. 7. *Trial Terms.* The trial terms of the circuit  
2 court shall be held at times and places designated by law.

Sect. 8. *Jurisdiction of Circuit Court.* The circuit court  
2 shall have and exercise original jurisdiction concurrent  
3 with the supreme judicial court in all equity cases and pro-  
4 ceedings and in proceedings in habeas corpus, writs of pro-  
5 hibition, error, mandamus, quo warranto and certiorari;  
6 and shall have and exercise exclusive jurisdiction in any  
7 and all matters either original or appellate now within the  
8 jurisdiction of any of the superior courts, and in all mat-  
9 ters, either original or appellate, in which the supreme judi-  
10 cial court now has jurisdiction, except as herein otherwise  
11 provided. It shall have and exercise all of the powers, du-  
12 ties and authority now vested in the supreme judicial court  
13 necessary for exercising the jurisdiction vested in the cir-  
14 cuit court by this act. Provided that it shall have and exer-  
15 cise none of the jurisdiction, powers, duties and authority  
16 of the supreme judicial court sitting as a law court. In  
17 all places in the statutes where the words "supreme judicial  
18 court" or "superior courts" are used, the words "circuit

19 court” shall be added or substituted whenever necessary to  
20 carry out the provisions of this act. The circuit court shall  
21 be the supreme court of probate and have and exercise all  
22 the powers vested in the supreme court of probate by the  
23 provisions of chapter sixty-seven of the revised statutes.

Sect. 9. *Retired Justices.* Any active retired justice or  
2 retired justice of either of the superior courts of Andros-  
3 coggin, Cumberland, Kennebec or Penobscot shall be en-  
4 titled to the same compensation as a retired justice of the  
5 circuit court and be eligible to appointment as an active re-  
6 tired justice of said circuit court, and may be assigned by  
7 the chief justice of the supreme judicial court to sit at any  
8 term of the circuit court with the same authority and pow-  
9 ers as though he were a regular justice of said circuit court,  
10 and whenever said chief justice so orders may hear all mat-  
11 ters, and issue all orders, notices, decrees and judgment in  
12 vacation that any justice of said circuit court is authorized  
13 to hear and issue.

Sect. 10. *Pending Writs.* Writs bearing teste of the su-  
2 preme judicial court and of the superior courts may be  
3 made, before this act becomes effective, returnable to a  
4 term of the circuit court held within six months next after  
5 the date of such writ, and any writ made before this act  
6 becomes effective shall be returnable to the first term of  
7 the circuit court, and if the defendant does not appear, judg-  
8 ment shall be withheld until a term of the circuit court next  
9 after the date to which the writ is returnable. Any writ

10 made returnable to the supreme judicial court or the su-  
11 perior court after this act shall take effect shall be return-  
12 able to the first term of the circuit court and if the defend-  
13 ant shall not appear judgment shall be withheld until a term  
14 of the circuit court most nearly corresponding with that  
15 of the supreme judicial or superior court to which it was  
16 returnable or further notice may be ordered.

Sect. 11. *Application of Chapter One Hundred Seventeen,*  
2 *Sections Five and Seven.* The provisions of section five  
3 and section seven of chapter one hundred seventeen of the  
4 revised statutes as amended shall apply to justices of the  
5 circuit court excepting that the amendment to said section  
6 five provided in chapter seventy-one of the public laws of  
7 nineteen hundred twenty-five shall not so apply. Section  
8 six of chapter one hundred seventeen of the revised statutes  
9 as amended is hereby repealed.

Sect. 12. *Transfer of Pending Proceedings.* All indict-  
2 ments, informations, actions of scire facias, criminal proces-  
3 ses, writs, petitions, libels and civil processes of whatsoever  
4 nature pending in the supreme judicial court, except those of  
5 which the supreme judicial court has concurrent jurisdiction  
6 with the circuit court, and all indictments, informations, ac-  
7 tions of scire facias, criminal processes, writs, petitions, lib-  
8 els and civil processes of whatsoever nature pending in either  
9 of the superior courts shall be transferred upon this act tak-  
10 ing full effect to the docket in the respective counties of the  
11 circuit court hereby established, and shall be entered upon

12 the docket of the same at the first term thereof next to be  
13 held after this act taking full effect, and shall have day there-  
14 in, and all warrants and recognizances, appeals in criminal  
15 cases and all criminal processes whatsoever which but for  
16 the passage of this act would be returnable to, or which by  
17 law would be entered in the supreme judicial court or either  
18 of the superior courts at the next term after January first,  
19 nineteen hundred thirty, shall be returnable to and be entered  
20 in the term of the circuit court next held in the county where  
21 such processes are returnable after said January first, nine-  
22 teen hundred thirty, and shall have day therein; and all grand  
23 jurors, witnesses, and others parties in any criminal mat-  
24 ters, including any person under bail who would but for the  
25 passage of this act be held to appear at the next term of  
26 the supreme judicial or superior court to be held in either  
27 of said counties shall be held to appear at the next term  
28 of the circuit court to be held in the same county in which  
29 appearance was required.

Sect. 13. *Writs Returnable.* All writs of the circuit  
2 courts returnable at a regular term of court in the county  
3 of Cumberland shall be made returnable at one of the next  
4 three terms to be begun and held after the issuing thereof,  
5 and in the counties of Androscoggin, Kennebec and Penob-  
6 scot at one of the next two terms to be so begun and held.  
7 In all other counties such writs shall be made returnable  
8 at the first term of court to be held more than fourteen  
9 days after the issuing thereof.



Sect. 14. *Clerks.* The clerk of the judicial courts in each  
2 county shall act as the clerk of the circuit court. Any  
3 deputy clerk, if his appointment has been approved by a  
4 resident justice of said circuit court or by the chief justice  
5 of the supreme judicial court, may, whenever the supreme  
6 judicial court and said circuit court are both in session at  
7 the same time, or whenever two sessions of the circuit court  
8 are in session at the same time, or whenever directed by  
9 the clerk, act as clerk of the circuit court or either session  
10 thereof in that county. The chief justice of the supreme  
11 judicial court shall designate one or more of the clerks of  
12 court who shall act as clerk of the law court, and receive  
13 such reasonable compensation as may be fixed by the chief  
14 justice. The chief justice, or in his absence, a senior justice  
15 present shall allow to the county in which any law term is  
16 held such expense as may be incurred on account of such  
17 law term which shall be paid by the state. Section forty-  
18 five of chapter eighty-two of the revised statutes is hereby  
19 repealed.

Sect. 15. *Rules of Court.* The justices of the circuit  
2 court may adopt rules governing the proceedings in said  
3 court, but until such rules are adopted and published the  
4 rules of the supreme judicial court shall govern the pro-  
5 ceedings unless inconsistent with this act. The supreme  
6 judicial court shall take judicial notice of the rules of the  
7 circuit court.

Sect. 16. *Transfer of Equity Cases.* Whenever a jury

2 trial is required in any equity case that may at any time be  
3 pending in the supreme judicial court, the case shall be  
4 transferred to the docket of the circuit court for the county  
5 having jurisdiction thereof and proceedings had as though  
6 the case had been originally brought in said court.

Sect. 17. *Conference of Justices.* The chief justice of  
2 the supreme judicial court may from time to time call to-  
3 gether the several justices of the circuit court at such place  
4 as he may appoint for conference as to the conduct and  
5 dispatch of judicial business, and interchange of views in  
6 matters of practice in said court. In addition to their sala-  
7 ries and expenses in holding the several terms of court  
8 to which they are assigned, the several justices shall be en-  
9 titled to their actual cash disbursements in attending such  
10 conference.

Sect. 18. Section one hundred sixty-seven of chapter  
2 eighty-seven of the revised statutes is hereby amended to  
3 read as follows:

'Sect. 167. *Stenographers.* The chief justice of the su-  
2 preme judicial court may appoint not more than ten stenog-  
3 raphers who shall report the proceedings in the supreme  
4 judicial court and in the circuit court and who shall be  
5 officials of the court to which they may from time to time  
6 be assigned by the chief justice, and be sworn to the faith-  
7 ful discharge of their duties. They shall take full notes of  
8 all oral testimony, and other proceedings in the trial of  
9 causes, including the charge of the justice and all comments

10 and rulings of said justice in the presence of the jury dur-  
11 ing the progress of the trial, as well as all statements and  
12 arguments of counsel addressed to the court, and furnish  
13 for the use of the court or any party interested, a fair,  
14 legible, longhand copy of so much of their notes as may be  
15 required. They shall also furnish a copy of so much of  
16 the evidence and other proceedings taken by them as either  
17 party to the trial requires, on payment therefor by such  
18 party at the rate of ten cents for every one hundred words.  
19 One of said stenographers designated for the purpose shall  
20 also perform such official and clerical services as may be  
21 required of him by the chief justice in term time or vaca-  
22 tion.'

Sect. 19. *Inconsistent Acts.* All acts or parts of acts in-  
2 consistent herewith are hereby repealed.

Sect. 20. *When Act Effective.* This act shall not take  
2 effect except as to the appointment of the justices of the  
3 circuit court until February first, nineteen hundred thirty.  
4 The appointment of such justices may be made at any time  
5 after ninety days from the adjournment of the eighty-fourth  
6 legislature to take effect January first, nineteen hundred  
7 thirty.