

MAINE STATE LEGISLATURE

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NEW DRAFT

EIGHTY-FOURTH LEGISLATURE

Senate Document

No. 332

S. P. 666

In Senate, March 8, 1929.

Reported by Senator Oakes of Cumberland from Committee on Judiciary and laid on table to be printed under joint rules.

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-NINE

AN ACT Relating to the Jurisdiction of the Supreme Judicial
and Superior Courts.

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

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

'Section 1. *Constitution of the court.* The supreme judicial court shall consist of a chief justice and seven associate justices and such active retired justices as may

4 be appointed and serving on said court, learned in the law
5 and of sobriety of manners.

Any vacancies existing at the time of the passage of this
2 act or occurring thereafter by reason of death, retirement,
3 or resignation shall remain unfilled until the number of
4 associate justices is reduced to five and thereafter the court
5 shall consist of a chief justice and five associate justices
6 and such active retired justices as may be appointed and
7 serving on said court.'

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

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

Sect. 3. 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
5 is heard, the respondent may appeal from said decision
6 to 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. 4. 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 eight sessions each year. The time and places
4 of holding the several sessions of the court shall be de-
5 termined by the chief justice and announced before De-
6 cember first of each year.'

Sect. 5. *Superior court.* The powers, duties and juris-
2 diction of the superior courts of Androscoggin, Cumber-
3 land, Kennebec and Penobscot are hereby enlarged as here-
4 inafter provided and extended to all of the counties of
5 the state, said courts being hereby united and consolidated
6 into one court hereinafter referred to as the superior court.
7 The justices of the aforesaid four superior courts shall

8 continue as justices of said court by virtue of their present
9 commissions and three additional justices, learned in the
10 law and of sobriety of manners, shall be appointed, com-
11 missioned and qualified as provided in the constitution, so
12 that seven justices shall constitute the membership of said
13 court. The chief justice of the supreme judicial court shall
14 assign the justices of the superior court to hold the trial
15 terms of said court. Whenever in the opinion of the chief
16 justice of the supreme judicial court it becomes necessary,
17 he may designate a justice of the supreme judicial court
18 or any active retired justice of the supreme judicial court
19 or of the superior court to hold a term of said superior
20 court or may designate any of such justices or a justice
21 of the superior court to hold one or more sessions thereof
22 separate from the session presided over by the justice
23 holding the regular trial term.

Sect. 6. *Trial terms.* The trial terms of the superior
2 court shall be held at times and places designated by law.

Sect. 7. *Jurisdiction of superior court.* The superior
2 court shall have and exercise original jurisdiction concur-
3 rent with the supreme judicial court in all equity cases and
4 proceedings and in proceedings in habeas corpus, writs of
5 prohibition, error, mandamus, quo warranto and certiorari;
6 and shall continue to have and exercise exclusive jurisdic-
7 tion except as concurrent jurisdiction is vested in the sev-
8 eral municipal courts in any and all matters either original
9 or appellate now within the jurisdiction of any of the

10 superior courts; and shall have and exercise jurisdiction,
11 exclusive of the supreme judicial court, in all matters at
12 law either original or appellate, in which the supreme judi-
13 cial court now has jurisdiction, except as herein otherwise
14 provided. It shall have and exercise all of the powers,
15 duties and authority now vested in the supreme judicial
16 court necessary for exercising the jurisdiction vested in
17 the superior court by this act, provided that it shall have
18 and exercise none of the jurisdiction, power, duties and
19 authority of the supreme judicial court sitting as a law
20 court. The justices of the superior court shall establish
21 a seal for said court and all writs and processes therefrom
22 shall be in the name of the state, in the usual form, bear-
23 ing the teste of any justice of said court, and signed by
24 any one of its clerks.

In all places in the statutes where the words “supreme
2 judicial court” are used, the words ‘superior court’ shall
3 be added or substituted whenever necessary to carry out
4 the provisions of this act. The superior court shall be the
5 supreme court of probate and have and exercise all the
6 powers vested in the supreme court of probate by the pro-
7 visions of chapter sixty-seven of the revised statutes.

Sect. 8. *Retired Justices.* Any active retired justice of
2 the superior court, whenever the chief justice of the su-
3 preme judicial court so orders, may hear all matters and
4 issue all orders, notices and decrees and judgments in vaca-
5 tion that any justice of said superior court is authorized
6 to hear and issue.

Sect. 9. *Pending writs.* Writs issued after August first, 2 nineteen hundred twenty-nine and before January first, 3 nineteen hundred thirty bearing teste of the supreme judi- 4 cial court or any one of the superior courts, except such 5 writs as are required to be returnable under existing law 6 previous to the first day of January, nineteen hundred 7 thirty, shall be made returnable at a term of the superior 8 court having jurisdiction thereof under this act, but not 9 later than the second term of the said court held subse- 10 quent to January first, nineteen hundred thirty and in any 11 event not later than seven months after the issuance of said 12 writ. Any writ made returnable to the supreme judicial 13 court or any superior court after this act shall take effect 14 shall be deemed returnable at the first term of the superior 15 court held next in the county having jurisdiction; and if 16 the defendant shall not appear judgment may be withheld 17 until the term of the superior court most nearly corres- 18 ponding with that of the supreme judicial or superior court 19 to which it was returnable or further notice may be 20 ordered.

Sect. 10. *Salaries.* Upon the going into effect of this 2 act, the salary of the chief justice of the supreme judicial 3 court shall be nine thousand dollars per year. The salaries 4 of each of the justices of the superior court shall be seven 5 thousand five hundred dollars per year. All provisions of 6 the statutes relating to reimbursement of justices of the 7 supreme judicial court for expenses incurred by them shall

8 remain in full force and effect, and these provisions shall
9 apply to justices of the superior court excepting that jus-
10 tices of the superior court shall not be entitled to reim-
11 bursement for expenses incurred in employing clerical as-
12 sistance.

Sect. 11. *Transfer of pending proceedings.* All indict-
2 ments, informations, actions of scire facias, criminal
3 processes, writs, petitions, libels, appeals from courts of
4 probate, and civil processes of whatsoever nature pending
5 in the supreme judicial court when this act becomes effec-
6 tive, except those of which the supreme judicial court has
7 concurrent jurisdiction with the superior court, shall be
8 transferred upon this act taking full effect to the docket
9 of the superior court of the respective counties to be heard
10 therein and shall be in order for trial at the first term
11 thereof next to be held after this act taking full effect, and
12 shall have day therein, and all warrants and recognizances,
13 appeals in criminal cases and all criminal processes what-
14 soever which but for the passage of this act would be re-
15 turnable to, or which by law would be entered in the su-
16 preme judicial court or any one of the superior courts at
17 the next term after January first, nineteen hundred thirty,
18 shall be returnable to and be entered in the term of the
19 superior court next held in the county where such processes
20 are returnable after said January first, nineteen hundred
21 thirty, and shall have day therein; and all grand jurors,
22 witnesses, and other parties in any criminal matters, in-

cluding any person under bail who may be ordered to appear at the next term of the supreme judicial or superior court to be held in either of said counties, shall be required to appear at the next term of the superior court to be held in the same county in which appearance was required.

Sect. 12. *Writs returnable.* All writs of the superior courts returnable at a regular term of court in the county of Cumberland shall be made returnable at one of the next three terms to be begun and held after the issuing thereof, and in the counties of Androscoggin, Kennebec and Penobscot at one of the next two terms to be so begun and held. In all other counties such writs shall be made returnable at the first term of court to be held more than fourteen days after the issuing thereof.

Sect. 13. *Clerks.* The clerk of the judicial courts in any county shall act as the clerk of the superior court in such county. Any deputy clerk, if his appointment has been approved by a resident justice of said superior court or by the chief justice of the supreme judicial court, may, whenever directed by the clerk, act as clerk of the superior court or any or either session thereof in that county. The chief justice of the supreme judicial court shall, from time to time, designate one or more of the clerks of court or some competent person or persons who shall act as clerks of the law court, and receive such reasonable compensation as may be fixed by the chief justice, but which in the aggregate shall not exceed a total sum of fifteen hundred

14 dollars per year for all services rendered by such clerks
15 including the issuing of certificates of rescripts. The chief
16 justice, or in his absence, the senior justice present shall
17 allow to the county in which any law term is held such
18 expense as may be incurred on account of such law term
19 which shall be paid by the state. The dockets of the law
20 court shall be made from time to time and kept as the
21 court may direct. Section forty-five of chapter eighty-two
22 of the revised statutes is hereby repealed.

Sect. 14. *Rules of court.* The justices of the superior
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 superior court.

Sect. 15. *Jury trials in equity cases.* Whenever a jury
2 trial is ordered in any cause in equity, such trial shall be
3 held in the superior court in the county in which such
4 cause is pending. Following the verdict of the jury a de-
5 cree shall be made by the presiding justice relating to the
6 issue or issues submitted to the jury. Further action may
7 then be taken by such presiding justice or the cause may
8 be further heard by any justice of the supreme judicial
9 court or of the superior court.

Sect. 16. *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 superior court at such

4 place as he may appoint for conference as to the conduct
5 and dispatch of judicial business, and interchange of views
6 in matters of practice in said court. In addition to their
7 salaries and expenses in holding the several terms of court
8 to which they are assigned, the several justices shall be
9 entitled to their actual cash disbursements in attending such
10 conference.

Sect. 17. 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 eleven
3 stenographers to serve for a term of seven years, who shall
4 report the proceedings in the supreme judicial court and in
5 the superior court and who shall be officials of the court
6 to which they may from time to time be assigned by the
7 chief justice, and be sworn to the faithful discharge of
8 their duties and each of whom shall receive from the state
9 a salary of three thousand dollars per year. They shall
10 take full notes of all oral testimony, and other proceedings
11 in the trial of causes, either at law or in equity, including
12 the charge of the justice in all trials before a jury, and
13 all comments and rulings of said justice in the presence of
14 the jury during the progress of the trial, as well as all
15 statements and arguments of counsel addressed to the
16 court, and during the trial furnish for the use of the court
17 or either of the parties a transcript of so much of their

18 notes as the presiding justice may direct. They shall also
19 furnish a transcript of so much of the evidence and other
20 proceedings taken by them as either party to the trial re-
21 quires, on payment therefor by such party at the rate of
22 fifteen cents for every one hundred words. One of said
23 stenographers designated for the purpose shall perform
24 such clerical services as may be required of him by the
25 chief justice who may allow him reasonable compensation
26 for such clerical services for which he shall be reimbursed
27 under chapter seventy-one of the public laws of nineteen
28 hundred twenty-seven.'

Sect. 18. *Messenger.* Any justice of the supreme judi-
2 cial court residing in Cumberland county may appoint a
3 messenger to act at all sessions of the law court in said
4 county and at all equity sessions held in said county, whose
5 compensation shall be the same as, but shall not exceed,
6 the amount now allowed to the messenger for the supreme
7 judicial court.

Sect. 19. Section one of chapter three hundred forty-
2 six in the private and special laws of nineteen hundred five
3 is hereby amended by striking out the words "the judge
4 of the superior court for the county of Cumberland, who"
5 and inserting in place thereof 'a judge of the superior court
6 resident in Cumberland county or by the chief justice of
7 the supreme judicial court. Said probation officer' so that
8 said section as amended shall read as follows:

'Section 1. *Probation officer of Cumberland county.* The

2 judge of the municipal court for the city of Portland shall
3 appoint one person as probation officer, to be approved by
4 a judge of the superior court resident in Cumberland
5 county or by the chief justice of the supreme judicial court.
6 Said probation officer shall act under the direction of said
7 courts. The term of office of said officer shall be for the
8 period of two years, or until removed by the judge of either
9 of said courts. A record of said appointment and ap-
10 proval and of any such removal shall be made by the
11 clerk of courts for such county and said clerk shall notify
12 the county commissioners and the county treasurer of the
13 county of Cumberland of the same.'

Sect. 20. *Inconsistent acts.* All acts or parts of acts in-
2 consistent herewith are hereby repealed.

Sect. 21. *When act effective.* This act shall take effect
2 on January first, nineteen hundred thirty, except, that on
3 or after August first, nineteen hundred twenty-nine jus-
4 tices of the superior court may be appointed and writs
5 may be issued in accordance with the provisions of sec-
6 tion nine.