

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY BAILEY & NOYES.

CHAP. 77.**TITLE EIGHT.****Judicial Courts, County Commissioners, and Officers connected with them.**

- CHAP. 77. Supreme judicial court. Attorney general. Reporter.  
 78. County commissioners.  
 79. Clerks. County attorneys, Attorneys at law.  
 80. Sheriffs and their deputies, Coroners, Constables,

**CHAPTER 77.****SUPREME JUDICIAL COURT, ATTORNEY GENERAL, REPORTER.****SUPREME JUDICIAL COURT. ORGANIZATION, GENERAL JURISDICTION AND POWERS.**

- SEC. 1. Constitution of the court. They may act though their county is interested.  
 2. Jurisdiction of all actions and prosecutions, to punish for contempts, and to administer oaths.  
 3. Superintendence of inferior courts and of records and clerks of former courts, and power to make rules for itself.  
 4. May issue all necessary writs, and how they are to be attested.

**EQUITY POWERS.**

- SEC. 5. Its equity powers; specifications.  
 6. Bill to be inserted in a writ, or filed in court, and how served.  
 7. Writs of injunction, when and how to be issued. Penalty for disobeying same.  
 8. Masters in chancery to be appointed; their oath, tenure of office, duties and fees.

**LAW COURTS.**

- SEC. 9. Five or more judges sit as a court of law; when less are sufficient. Verdict to stand unless majority concur in granting a new trial.  
 10. Law districts defined, and when courts are to be held in each. Annual session of all justices to decide all undecided cases.  
 11. By consent of parties, cases heard out of their district.  
 12. Who to be clerks of the district; cases to be entered on docket for the district.  
 13. Jurisdiction of the law court. What entry to be made on county docket.  
 14. Cases may be argued in writing without entry on district docket.  
 15. Complaint may be filed for not entering cases on law docket, and how disposed of.  
 16. Clerks to enter judgment on certificate as of preceding term; attachment and right to disclose preserved till thirty days after the next term.

**TRIAL COURTS.**

- SEC. 17. Terms for other business held by one judge, when in each county.

- SEC. 18. Days when court not to be held.
19. Judge, without a jury may decide cases.
  20. When a judge does not attend, court to be adjourned; proceedings.
  21. Exceptions in civil causes and criminal cases. Proceedings if they are deemed frivolous.
  22. Trials to be closed when dilatory pleas are overruled, or exceptions filed.
  23. Interest allowed on verdicts and awards.

## ATTORNEY GENERAL.

- SEC. 24. Attorney general to attend law courts and capital trials, and instruct county attorneys.
25. To cause witnesses to be recognized, and procure attendance of those living out the state.
  26. To make annual report to executive.
  27. Not to receive compensation from prosecutor.

## REPORTER.

- SEC. 38. Reporter, his appointment, oath and tenure of office.
29. He is to make reports of decisions, have the profits, sell to the state at price fixed by executive. Size and style of the volumes.
  30. He is to publish cases argued while in office. If reporter dies, successor to finish his cases, furnish the state, and have profits except fair allowance to deceased.

## SUPREME JUDICIAL COURT. ORGANIZATION, GENERAL JURISDICTION AND POWERS.

SEC. 1. The supreme judicial court shall consist of a chief justice and seven associate justices, learned in the law and of sobriety of manners, who are conservators of the peace throughout the state, and may act in any case though the county in which they reside or own property, is interested therein.

SEC. 2. The court has cognizance of all offenses and misdemeanors, and of civil actions between party and party and between the state and individuals, legally brought before it; may render judgment and award execution thereon; may exercise its jurisdiction according to the common law not inconsistent with the constitution or any statute; and may punish contempts against its authority by fine and imprisonment or either, and administer oaths in civil or criminal cases.

SEC. 3. It has the general superintendence of all inferior courts for the prevention and correction of errors and abuses, where the law does not expressly provide any remedy; control of all records and documents in the custody of its clerks, including those of former courts whose jurisdiction it has, and the powers of its clerks are the same respecting all of them; and it may establish and cause to be recorded rules not repugnant to law, respecting the modes of trial and conduct of business in suits at law and in equity.

Constitution of the court. Judges may act though their county is interested.  
R. S. c. 77 § 1.  
1860. c. 171.

Its jurisdiction of all actions and prosecutions, and to punish for contempts and administer oaths.  
R. S. c. 77,  
§§ 2, 4, 7.  
41 Me. 15, 38.  
49 Me. 392.

Superintendence of inferior courts, and of the records, and clerks of former courts; power to make rules for itself.  
R. S. c. 77,  
§§ 5, 12, 13.  
43 Me. 176.  
53 Me. 83, 107.

## CHAP. 77.

May issue all necessary writs, and how attested.  
R. S. c. 77, §§ 6, 11.  
41, Me. 15, 38.  
53 Me. 88.

SEC. 4. It may issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all writs and processes necessary for the furtherance of justice, or the execution of the laws, in the name of the State of Maine, under the seal of the court, attested by any justice not a party or interested in the suit, and signed by the clerk.

## EQUITY POWERS.

Its equity powers.  
R. S. c. 77, § 8.

SEC. 5. It has jurisdiction as a court of equity in the following cases: (a)

*First.*—For the redemption of estates mortgaged.

53 Me. 62.

*Second.*—For relief from forfeiture of penalties to the state, and from forfeitures in civil contracts and obligations, and in recognizances in criminal cases.

1869, c. 17.  
40 Me. 130.  
42 Me. 32.  
46 Me. 34.  
47 Me. 303.

*Third.*—To compel the specific performance of written contracts, and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when a full performance or payment has been made to the contracting party.

43 Me. 206.  
44 Me. 206.  
45 Me. 122.  
49 Me. 362.  
52 Me. 54.

*Fourth.*—For relief in cases of fraud, trusts, accident, or mistake.

*Fifth.*—In cases of nuisance and waste.

*Sixth.*—In cases of partnership and between part owners of vessels and of other real and personal property, for adjustment of their interests in the property and accounts respecting it.

49 Me. 288.

*Seventh.*—To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust, and the expediency of making changes and investments of property held in trust.

43 Me. 570.  
46 Me. 297.  
53 Me. 441.

*Eighth.*—In cases where the power is specially given by statute, and for discovery in the cases before named, according to the course of chancery proceedings.

1864, c. 239, § 1.  
1865, c. 302, § 1.  
55 Me. 61.  
56 Me. 32.  
See c. 8, § 30.

*Ninth.*—When counties, cities, towns or school districts, for a purpose not authorized by law, vote to pledge their credit, or to raise money by taxation, or to pay money from their treasury; or for such purpose, any of their officers or agents attempt to pay out such money, the court shall have equity jurisdiction, on application of not less than ten taxable inhabitants therein.

Bills to be inserted in a writ or filed in court, and how served.  
R. S. c. 77, § 9.  
1867, c. 67.  
56 Me. 73.

SEC. 6. The bill may be inserted in a writ to be served as other writs without the signature of the complainant, or filed in court and served as the rules of court prescribe.

Writs of injunction, when and how to be issued. Penalty for disobeying same.  
R. S. 77, § 10.

SEC. 7. Writs of injunction may be issued in cases of equity jurisdiction, and when specially authorized by statute. A justice of the court may issue them, in term time or in vacation, to continue in

(a) 7 Me. 225; 8 Me. 320; 17 Me. 107, 137, 292, 404; 18 Me. 204; 19 Me. 124, 363, 431; 20 Me. 269; 21 Me. 251, 273; 22 Me. 191, 207, 257, 511; 23 Me. 46, 93, 174, 269, 448; 24 Me. 42, 332; 25 Me. 267, 341, 379, 531; 29 Me. 273, 490; 31 Me. 28, 93, 340; 32 Me. 81, 203, 399, 474; 33 Me. 222, 530; 34 Me. 143, 370; 36 Me. 50, 115, 577; 37 Me. 264, 308; 40 Me. 245; 41 Me. 109; 50 Me. 239.

force until the end of the next term of the court, unless sooner dissolved, after notice to the adverse party, or upon bond taken with sufficient sureties to pay all damages and costs. When a writ of attachment has been duly issued against a person for contempt in disobeying a decree or order of the court or a judge thereof, returnable to the next term, and such person has been arrested and given bail, and he afterwards disobeys such decree or order, he may be arrested on a second writ issued on proper proceedings therefor, returnable to the next term, and he shall not be bailable thereon.

SEC. 8. The court by majority, shall appoint masters in chancery not more than five in a county, and make all needful rules relating to proceedings before them. Such masters shall be sworn, and hold their offices five years unless sooner removed by the court; perform the duties pertaining to their offices according to equity practice, and be entitled to the fees therefor allowed by the court. Unless the parties agree upon another person, all cases shall be committed to them.

## LAW COURT.

SEC. 9. When sitting as a court of law, to determine questions of law, arising in suits at law and in equity, and in criminal trials and proceedings, the court shall be composed of five or more of the justices, who shall hear and determine such questions by the concurrence of five members; but when any of them cannot act in a case by reason of interest or other disqualification, a majority of the others shall be sufficient; and in any civil action in which there is a subsisting verdict, if a majority of the justices qualified to act in the case, after mature consideration and consultation, do not concur in granting a new trial, the court shall order judgment on the verdict.

SEC. 10. For the purpose of the law court the state is divided into three districts, denominated the Western, Middle and Eastern. The first is composed of the counties of Franklin, Oxford, Androscoggin, York and Cumberland; and an annual session of the court shall be held therein, at Portland, on the third Tuesday of July. The second is composed of the counties of Somerset, Knox, Lincoln, Sagadahoc and Kennebec; and an annual session of the court shall be held therein, at Augusta, on the fourth Tuesday of May. The third is composed of the counties of Aroostook, Washington, Piscataquis, Hancock, Waldo and Penobscot; and an annual session of the court shall be held therein, at Bangor, on the third Tuesday of June. A meeting of all the justices shall be annually held at Augusta during the law term; and all undecided questions of law and equity previously submitted, shall then be decided.

CHAP. 77.

1864, c. 239, § 1.  
1870, c. 163.  
42 Me. 119.  
49 Me. 320,  
392.  
54 Me. 402.  
55 Me. 549.

Masters in  
chancery to be  
appointed and  
sworn; their  
tenure of of-  
fice, duties  
and fees.  
1862, c. 155,  
§§ 1, 2, 3.  
40 Me. 50.  
53 Me. 214, 351.

Five or more  
judges sit as a  
court of law;  
when less are  
sufficient. Ver-  
dict to stand  
unless major-  
ity concur in  
granting new  
trial.  
R. S. c. 77, § 14.  
1868, c. 148.  
1870, c. 100.  
41 Me. 15.  
45 Me. 151, 417.

Law districts  
defined, and  
when courts  
are to be held  
in each.  
Annual session  
of all judges  
to decide all  
undecided  
cases.  
R. S. c. 77,  
§§ 15, 21.  
1860, c. 146, § 2.  
1864, c. 270 § 1.  
1869, c. 46.

## CHAP. 77.

By consent of parties cases heard out of their district, and when. 1869, c. 46.  
Who to be Clerks of the districts, cases to be entered on docket for the district. R. S. c. 77, § 16.

Jurisdiction of the law court. What entry to be made on county docket. R. S. c. 77, § 17. 41 Me. 15. 45 Me. 151, 417. 46 Me. 327. 50 Me. 271. 56 Me. 281.

Parties may argue in writing without entering on docket. R. S. c. 77, § 18.

Complaint may be filed for not entering cases on law docket, and how disposed of. R. S. c. 77 § 19. 36 Me. 34.

Clerks to enter judgment on certificate as of preceding term; attachments and right to disclose preserved till thirty days after next term. R. S. c. 77, § 20. 1860, c. 185. 1868, c. 159.

SEC. 11. By consent of parties any action or other matter which properly comes before the law court, may be entered and heard in either judicial district, and shall be in order after the regular business of the district is disposed of.

SEC. 12. The clerks of the counties of Cumberland, Kennebec, and Penobscot, shall be clerks of the districts including those counties. A docket for the district shall be kept, on which all cases pending on the dockets of the counties within it and marked law, and all other cases of which the court of law has jurisdiction, are to be entered and heard in the order of the counties as above named.

SEC. 13. The following cases only come before the court as a court of law: cases in which there are motions for new trials upon evidence reported by the judge; questions of law arising on reports of cases; bills of exceptions; agreed statements of facts; cases civil or criminal, presenting a question of law; cases in equity presented on demurrer to the bill, or when prepared for a final hearing; motions to dissolve injunctions issued after notice and hearing, or continued after a hearing; questions arising on writs of habeas corpus, mandamus, and certiorari, when the facts are agreed, or ascertained and reported by a judge. They are to be marked law on the docket of the county where pending, and there continued until their determination is certified by the clerk of the district to the clerk of the county.

SEC. 14. When parties enter an agreement on the docket of a county under cases named in the preceding section, and transmit arguments in writing to the court before or at its next session for the district, such cases need not be entered on the docket of the district; and the court may pronounce judgment in any county, and cause it to be certified and entered, in the county where pending, as of the preceding term.

SEC. 15. When cases mentioned in section thirteen are not entered on the docket of the district within the first two days of the next law term, the opposite party may at that term, enter a complaint, briefly setting forth the facts, and the court, if satisfied of the truth thereof, may render judgment in his favor, as in other cases decided by it; and if the case is on exceptions, treble costs shall be awarded from the time they were filed.

SEC. 16. The clerk of a county, by virtue of a certificate provided for in section fourteen, received in vacation and stating the day of its reception, which shall be deemed the day of the rendition of judgment, shall enter judgment as of the preceding term, and execution may issue as of that term; but all attachments then in force continue thirty days after the next term in that county; and if the defendant was arrested on mesne process and gave bond to disclose after judgment, he may do so after said next term without breach of his bond.

## TRIAL COURTS.

## CHAP. 77.

SEC. 17. For the trial of civil actions and of persons accused of offences, and for the transaction of all other business, except cases named in the thirteenth section, the court shall be held annually by one of the judges, at the following places and times; and the judges shall so hold said terms, under the direction of the chief justice, that their services shall be divided to each county as equally as may be.

Terms for other business, whole to be held by one judge in each county.  
R. S. c. 77, § 22.  
1867, c. 115.  
1868, c. 193;  
c. 216, § 5.  
1869, c. 261, spec.  
1870, c. 112, 153.

In the county of Androscoggin, at Auburn, on the third Tuesdays of January, April and September.

Androscoggin.

In the county of Aroostook, at Houlton, on the last Tuesday of February and third Tuesday of September.

Aroostook.

In the county of Cumberland, at Portland, on the second Tuesdays of January, April and October, for the transaction of civil business.

Cumberland.

In the county of Franklin, at Farmington, on the first Tuesday of March and fourth Tuesday of September.

Franklin.

In the county of Hancock, at Ellsworth, on the second Tuesdays of April and October.

Hancock.

In the county of Kennebec, at Augusta, on the first Tuesdays of March and August, and third Tuesday of October.

Kennebec.

In the county of Knox, at Rockland, on the second Tuesdays of March and December, and third Tuesday of September.

Knox.

In the county of Lincoln, at Wiscasset, on the fourth Tuesdays of April and October.

Lincoln.

In the county of Oxford, at Paris, on the second Tuesday of March, the third Tuesday of September and first Tuesday of December.

Oxford.

In the county of Penobscot, at Bangor, on the first Tuesdays of January, April and October, for the transaction of civil business, and on the first Tuesday of February and second Tuesday of August, for the transaction of criminal business.

Penobscot.

In the county of Piscataquis, at Dover, on the last Tuesday of February and second Tuesday of September.

Piscataquis.

In the county of Sagadahoc, at Bath, on the first Tuesday of April and third Tuesdays of August and December; the December term for civil business only.

Sagadahoc.

In the county of Somerset, at Norridgewock, on the third Tuesdays of March, September and December.

Somerset.

In the county of Waldo, at Belfast, on the first Tuesday of January, and the third Tuesdays of April and October.

Waldo.

In the county of Washington, at Machias, on the first Tuesdays of January and October, and at Calais, on the fourth Tuesday of April.

Washington.

In the county of York, at Saco, on the first Tuesday of January, and at Alfred, on the third Tuesdays of May and September.

York.



**CHAP. 77.** **SEC. 18.** No court shall be held on christmas day, the fourth of July, second Monday of September, or any day designated for choice of president and vice president of the United States, or for the annual fast or thanksgiving; and when the time fixed for a term of said court falls on either of said days, it shall stand adjourned till the next day, which shall be deemed the first day of the term for all purposes.

Days when court not to be held.  
R. S. c. 77, § 22.  
1858, c. 4.  
See c. 106, § 8.

Judge without a jury, may decide cases.  
R. S. c. 77, § 25.  
5 Me. 140.

When judge does not attend, court to be adjourned; proceedings.  
R. S. c. 77, § 26.  
56 Me. 424.

Exceptions in civil and criminal cases. Proceedings if they are deemed frivolous.

R. S. c. 77, § 27.  
1870, c. 136 § 1.  
41 Me. 15.  
45 Me. 151, 417.  
49 Me. 392.  
56 Me. 24, 246, 538.

Trials to be closed when dilatory pleas overruled or exceptions filed.

R. S. c. 77, § 28.  
1870, c. 136, § 2.  
53 Me. 536.

Interest allowed on verdicts and awards.

R. S. c. 77, § 29.  
26 Me. 19.  
50 Me. 337.  
53 Me. 514.

Attorney General to attend law courts and capital trials and instruct county attorneys.

R. S. c. 77, § § 30, 31.  
To cause witnesses to be recognized,

**SEC. 19.** The justice presiding at such terms shall decide any cause without the aid of a jury, when the parties enter upon the docket an agreement authorizing it.

**SEC. 20.** When no justice attends on the day for holding a court, the sheriff, or in his absence, the clerk, shall by oral proclamation in the court house and by notice posted on the door thereof, adjourn the court from day to day till a justice attends, and, in case of necessity, without day, and when so adjourned, actions brought for that term shall be entered by the clerk, and they, with all actions on the docket, shall be continued to the next term.

**SEC. 21.** When the court is held by one justice, a party aggrieved by any of his opinions, directions, or judgments, in any civil or criminal proceeding, may, during the term, present written exceptions in a summary manner, signed by himself or counsel, and when found to be true they shall be allowed and signed by such judge; but if he deems them frivolous and intended for delay, he may so certify on the motion of the party not excepting; and such exceptions may then be transmitted at once by such judge to the chief justice, and shall be argued in writing on both sides within thirty days thereafter, unless the judge, for good cause, enlarges the time, and be considered and decided by the justices of said court as soon as may be, and the decision certified to the clerk of the county where the case is pending.

**SEC. 22.** When a dilatory plea is overruled and exceptions taken, the court is to proceed and close the trial, and the action shall then be continued and marked law, subject to the provisions of the preceding section.

**SEC. 23.** Interest is to be allowed on verdicts and amounts reported by referees to be due, from the time of finding or acceptance to the time of judgment.

#### ATTORNEY GENERAL.

**SEC. 24.** The attorney general, when practicable, shall attend all the terms of the law court, and all capital trials on notice from the clerk, and give all proper instructions to county attorneys when he is absent and at other times.

**SEC. 25.** When a criminal prosecution, in which he appears, is continued, he shall cause the witnesses in behalf of the state to recognize to appear at the next term, unless otherwise directed by court,

and may procure the attendance of a witness living out of the state deemed material by him in procuring an indictment or conviction; and the court shall allow such witness a reasonable compensation beyond his legal fees.

SEC. 26. He shall, annually, on the first day of December, make a report to the governor and council of the amount and kind of official business done by him, and the several county attorneys during the year preceding, stating the number of persons prosecuted, their alleged offences, the results, and the punishments awarded, with such suggestions as are deemed useful.

SEC. 27. He shall not receive any fee or reward, from or in behalf of any prosecutor, for official services, or during the pendency of a prosecution, be engaged as counsel or attorney for either party in a civil action depending essentially on the same facts.

#### REPORTER.

SEC. 28. The governor, with advice of council, in case of a vacancy, shall appoint a person learned in the law, to be reporter of the decisions of the law court, who shall be sworn and hold his office during the pleasure of the executive.

SEC. 29. He shall, by his personal attendance when practicable, or by the best other means in his power, prepare correct reports of all legal questions argued, reporting the cases more or less at large according to his judgment of their importance. He shall be entitled to the profits of the work, and shall publish at least one volume yearly, and furnish the usual number of copies to the state at a price fixed by the governor and council; and for two years after publication, shall furnish them at the same price for use in the state, unless he relinquishes to the state his right to the profits thereof. The volumes shall be of the average size of Metcalf's reports, and equal to them in paper, printing, binding, general finish and quantity of printed matter.

SEC. 30. After ceasing to hold office, he shall prepare and publish any unpublished cases argued while in office; and if a reporter dies, his successor shall complete his unfinished work; furnish copies thereof to the state as the deceased was bound to do, and be entitled to the profits thereof, paying to the legal representatives of the deceased such consideration for his interests therein, as the governor and council deem equitable.

CHAP. 77.

and procure attendance of those living out the state. R. S. c. 77, § 32, 33.

To make annual report. R. S. c. 77, § 34. 1859, c. 70.

Not to receive compensation from prosecutor.

R. S. c. 77, § 35.

Reporter; appointment, oath and tenure of office. R. S. c. 77, § 36.

He is to make reports, have the profits, and sell to the state at a price fixed by executive. Size and style of volumes. R. S. c. 77, § 37, 38. 1864, c. 252.

He is to publish cases argued while in office. If reporter dies, successor to finish his cases, furnish the state and have profits except a fair allowance to deceased. R. S. c. 77, § 39. 1859, c. 110.