

MAINE STATE LEGISLATURE

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Fifty-Seventh Legislature.

HOUSE.

No. 23.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SEVENTY-EIGHT.

AN ACT to facilitate the prompt administration of justice by establishing a superior court in the county of Kennebec.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. A superior court is hereby established
2 at Augusta, within and for the county of Kennebec,
3 consisting of one justice, who shall be an inhabitant
4 of said county, of sobriety of manners and learned in
5 the law ; he shall be appointed, commissioned, and
6 qualified according to the constitution, and shall reside,
7 during his continuance in office, in Augusta.

SECT. 2. Said justice shall establish a seal for said
2 court ; and all writs and processes issuing therefrom
3 shall be in the name of the state, of the usual forms,

4 bearing the *teste* of said justice, under the seal of said
5 court, and shall be signed by its clerk ; they shall be
6 obeyed and executed throughout the state.

SECT. 3. The clerk for the time being of the
2 supreme judicial court in said county shall also be
3 clerk of said superior court ; and shall receive for his
4 services as such the fees allowed other clerks for
5 similar services in the supreme judicial court. He
6 shall appoint a deputy, approved by said justice, who
7 shall act as clerk of said superior court whenever said
8 court and the supreme judicial court happen both to
9 be in session in said county ; and whenever said clerk
10 of the supreme judicial court is absent, or the office is
11 vacant, said justice may appoint one to supply the
12 vacancy during such absence, or until an appointment
13 is made by the governor and council, or by the
14 supreme judicial court.

SECT. 4. The sheriff of the county of Kennebec
2 shall attend said superior court, unless the supreme
3 judicial court shall be in session in said county, in
4 which case he shall specially designate a deputy,
5 approved by said justice of said superior court, so to
6 attend. And whenever it shall happen that said justice
7 is prevented from attending at the time and place at
8 which said court by law or by adjournment ought to

9 be held, said sheriff or such deputy shall by oral pro-
10 cedure, adjourn said court from day to day until said
11 justice shall attend.

SECT. 5. Within said county, said superior court
2 shall have exclusive appellate jurisdiction of civil
3 appeals from municipal courts, police courts, and trial
4 justices ; exclusive original jurisdiction of actions of
5 scire facias on judgments and recognizances not exceed-
6 ing five hundred dollars ; of all bastardy trials, and of
7 all other civil actions at law not exclusively cognizable
8 by municipal courts, police courts, and trial justices,
9 where the damages demanded do not exceed one
10 thousand dollars, except complaints for flowage, real
11 actions, actions of trespass quare clausum ; and con-
12 current original jurisdiction of proceedings in habeas
13 corpus.

SECT. 6. Said court shall be held on the first Tues-
2 day of February and April, second Tuesday of June,
3 and first Tuesday of September and December.
4 Travers jurors shall be drawn and returned to serve at
5 said terms as in the supreme judicial court, except
6 that the same jurors may be required by the justice to
7 serve for two successive terms. All actions shall be
8 made returnable at one of the two terms next begun
9 and held after the commencement of such actions. If

10 the plaintiff desires a jury trial, he shall indorse the
11 same upon his writ at the time of entry. The defend-
12 ant shall within fourteen days after entry, file his
13 pleadings, and if the plaintiff has not demanded a
14 jury, the defendant shall indorse on his plea his de-
15 mand for a jury, if he desires one. Whenever a jury
16 shall be so demanded by either party, the clerk shall
17 enter that fact on the docket, and all other cases,
18 except appeals, shall be tried by the justice without
19 the intervention of a jury, subject to exceptions in
20 matters of law, in term time, or if both parties desire,
21 at chambers. Whenever, by accident or mistake, the
22 plaintiff fails to indorse upon his writ at the time of
23 entry a request for a jury trial, or if the defendant, by
24 accident or mistake, shall fail to indorse upon his plea
25 when filed, a demand for a jury, the court may, on
26 motion of either party, at its discretion, order a trial
27 by jury in the cause. When a defendant, legally
28 served, does not appear by himself or attorney within
29 the first three days of the term, he shall be defaulted
30 as in the supreme judicial court. If the defendant
31 does not file his pleadings as hereinbefore provided, he
32 shall be defaulted on the first day of the next term
33 after entry, unless the court for good cause shall grant
34 leave to file a plea, or shall otherwise lawfully dispose

35 of the action. All actions duly answered to shall be
36 in order for trial at the next term after entry, and
37 shall be so tried, except for good cause. Appeals
38 shall be entered by the appellant as in the supreme
39 judicial court, and shall be in order for trial at the first
40 term.

SECT. 7. Exceptions may be alleged as in the supreme
2 judicial court, and entered, heard and determined at
3 the law term held in the middle district, *provided* that
4 when the next law term happens to be held in either
5 of the other districts, the justice of the superior court
6 may, on motion of the party not excepting, certify the
7 exceptions to said next law term, if in his opinion they
8 are alleged mainly for delay; but the party so moving
9 shall be deemed to waive his right to be heard in oppo-
10 sition to said exceptions, which shall be entered and
11 determined at said next law term without argument by
12 said party, and upon the oral or written argument of
13 the party excepting. Cases certified upon agreed state-
14 ments of facts, reports and motions for new trials, shall
15 be entered, heard and determined at the next law term
16 in the middle district, but any case for the law court
17 may, by agreement of parties, be entered at the next
18 law term held in either district. And all exceptions
19 arising in cases within the exclusive jurisdiction of said

20 superior court may be certified at once by said justice
21 to the chief justice of the supreme judicial court, and
22 shall, when so certified, be argued in writing on both
23 sides within thirty days thereafter unless the justice of
24 said superior court shall, for good cause, enlarge the
25 time, and exceptions so certified shall be considered
26 and determined by the justices of the supreme judicial
27 court, as soon as may be. Decisions of the law court
28 on all exceptions and questions from said superior
29 court shall be certified to the clerk of said superior
30 court, with the same effect as in cases originating in
31 the supreme judicial court in said county.

SECT. 8. When a demurrer to a declaration is over-
2 ruled, the defendant, notwithstanding he excepts, may
3 plead anew within such time as the justice orders, but
4 in all cases where exceptions are alleged by the defend-
5 ant, the action shall, notwithstanding, remain upon the
6 docket of said superior court and be proceeded with as
7 if no exceptions had been taken, until the case is in
8 such a condition that the overruling of said exceptions
9 would finally dispose of it. And the action shall then
10 be transferred to the law court, or certified to the chief
11 justice thereof, as hereinbefore provided for the hear-
12 ing and determination of all exceptions arising in any
13 stage of the case.

SECT. 9. The supreme judicial court, sitting as a
2 court of law for the middle district, shall have the
3 same jurisdiction of all questions of law, motions for
4 new trials, and questions arising on reports or agreed
5 statements of facts, originating in said superior court,
6 as if they had originated in the supreme judicial court
7 for Kennebec county; and said law court sitting in
8 either of the other districts shall have the same juris-
9 diction of all questions and motions certified thereto
10 from said superior court as hereinbefore provided. And
11 all provisions of law and rules of the supreme judicial
12 court relative to the transfer of actions and other mat-
13 ters from the supreme judicial court for said county, or
14 from its docket to the docket of said law court, and all
15 provisions of law and rules regulating proceedings in
16 such cases, and the effect of such proceedings, shall
17 apply to the transfer of actions from said superior
18 court or its docket to said law court, and to the pro-
19 ceedings in such cases, and the effect thereof, except
20 so far as they may be inconsistent with the foregoing
21 provisions of this act.

SECT. 10. Said superior court is hereby authorized
2 to administer all necessary oaths, render judgment, and
3 issue execution, punish for contempt, and compel at-
4 tendance, as in the supreme judicial court; to make all

5 such rules and regulations, not repugnant to law, as
6 may be necessary and proper for the administration of
7 justice promptly and without delay; and the provisions
8 of law relative to the jurisdiction of the supreme judi-
9 cial court in said county over parties, the arrest of per-
10 sons, attachment of property, the time and mode of
11 service of precepts, proceedings in court, the taxation
12 of costs, the rendition of judgments, the issuing, ser-
13 vice and return of executions, and all other subjects,
14 are hereby made applicable and extended to said supe-
15 rior court in all respects, except so far as they are
16 modified by the provisions of this act; and said supe-
17 rior court is hereby clothed as fully as the supreme
18 judicial court with all the powers necessary for the
19 performance of all its duties.

SECT. 11. Final judgments in said superior court
2 may be re-examined in the supreme judicial court on
3 a writ of error, or on petition for review, and when
4 the judgment is reversed, the supreme judicial court
5 shall render such judgment as said superior court
6 should have rendered, and when a review is granted,
7 it shall be tried in said supreme judicial court, which
8 shall have the same power to grant writs of superse-
9 deas of executions issued from said superior court as it
10 has of executions issued from the supreme judicial
11 court.

SECT. 12. In case the justice of said superior court
2 should, by reason of continued sickness, or other cause,
3 be prevented from holding a term or terms of said
4 court, any justice of the supreme judicial court may
5 at the request of said justice of said superior court,
6 hold such term or terms of said superior court, in place
7 of the justice thereof. And during a vacancy in the
8 office of said justice of said superior court, all writs
9 issued from the office of the clerk thereof, shall bear
10 teste of any one of the justices of the supreme judicial
11 court. Whenever the justice of said superior court
12 shall be disqualified by interest or other lawful cause
13 from trying any cause pending in said court, said case
14 shall thereupon be transferred to the docket of the
15 supreme judicial court for said county, and disposed of
16 in said court according to law.

SECT. 13. This act shall take effect March first,
2 eighteen hundred and seventy-eight, and the first term
3 of said superior court shall be held on the first Tuesday
4 of April, eighteen hundred and seventy-eight. At
5 any term of the supreme judicial court for said county
6 of Kennebec, held after the passage of this act, any
7 action pending therein which would fall within the
8 exclusive jurisdiction of said superior court, as herein-
9 before defined and established, with all papers belong-

10 ing thereto and orders and decrees thereon, may, on
11 motion of either party, be transferred from the docket
12 of said supreme judicial court to the docket of said
13 superior court, and entered, tried and have day there-
14 in as if it had been originally commenced therein,
15 provided that the justice presiding in said supreme
16 judicial court believes that a speedier trial may thus
17 be had. And upon the taking effect of this act, the
18 jurisdiction of the supreme judicial court for the trial
19 of civil cases in said county, shall be limited in con-
20 formity to the foregoing provisions; and all acts and
21 parts of acts relating to courts and judicial proceedings
22 shall be modified so far as to give full effect to this
23 act, and all acts and parts of acts inconsistent with
24 this act are hereby repealed.

SECT. 14. The justice of said superior court may be
2 appointed, commissioned and qualified at any time
3 after the approval of this act, and his salary shall be
4 two thousand dollars, payable quarterly.

SECT. 15. The original and appellate jurisdiction in
2 all criminal matters now vested in and exercised by
3 the supreme judicial court within and for the county
4 of Kennebec, and all powers incident thereto, shall at
5 the end of the next October term thereof, be trans-
6 ferred to and conferred upon the superior court within

7 and for said county, which court shall thereafter exer-
8 cise the same in the same manner as theretofore
9 authorized by law to be exercised by the supreme
10 judicial court in said county.

SECT. 16. Said criminal business of said county of
2 Kennebec, shall after the month of November next, be
3 transacted at the terms of said superior court held on
4 the first Tuesdays of December, April and September,
5 together with the civil business of said court.

SECT. 17. All indictments and informations, and all
2 criminal processes pending in said supreme judicial
3 court for said county at the end of said next October
4 term thereof, shall be transferred to said superior court,
5 and shall be entered upon the docket of the same at
6 the next December term thereof, and shall have day
7 therein, and all warrants and recognizances, appeals in
8 criminal cases, and all criminal processes whatever,
9 which but for the passage of this act would be return-
10 able to or which by law would be entered in said
11 supreme judicial court in said county on the third
12 Tuesday of October, eighteen hundred and seventy-
13 eight, shall be returnable to and entered upon the
14 docket of said superior court at said December term
15 thereof, and shall have day therein ; and all grand
16 jurors, witnesses and others in criminal matters, who

17 would, but for the passage of this act, be held to ap-
18 pear at said supreme judicial court for said county, on
19 the third Tuesday of October, eighteen hundred and
20 seventy-eight, shall be held to appear at said Decem-
21 ber term of said superior court, and said grand jurors
22 shall also attend at the April term of said superior
23 court in the year eighteen hundred and seventy-nine.
24 Venires for grand jurors to serve at said superior court,
25 shall be issued at least forty days before the first Tues-
26 day of September annually, and such jurors shall serve
27 at every term of said superior court for the transaction
28 of criminal business throughout the year.

SECT. 18. All exceptions or questions of law arising
2 in any way during the trial of criminal cases in said
3 superior court, shall be transferred to the law docket
4 of the supreme judicial court for the middle district,
5 and shall have day therein ; and if said exceptions are
6 sustained or a new trial is ordered, the cause shall be
7 remanded to said superior court for trial. All motions
8 for a new trial in criminal cases tried in said superior
9 court, shall be heard and finally determined by the
10 justice thereof.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 23, 1878. }

Reported from the Kennebec County Delegation, by Mr.
WEEKS of Augusta, and on his motion ordered printed.

ORAMANDAL SMITH, *Clerk.*