

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1835.

AUGUSTA:
WILLIAM J. CONDON,.....PRINTER.

1835.

FIFTEENTH LEGISLATURE.

NO. 3.

HOUSE.

STATE OF MAINE.

AN ACT, establishing a Supreme Judicial Court within this State, and for other purposes.

SECT. 1. *Be it enacted by the Senate and*
2 House of Representatives, in Legislature as-
3 ssembled, That from and after the passage of this
4 Act, so much of an Act, approved on the twenty
5 fourth day of June, one thousand eight hundred
6 and twenty, as declares, "that there shall be a
7 Supreme Judicial Court in this State, to con-
8 sist of one Chief Justice, and two Associate
9 Justices," and all acts, and parts of acts, addi-
10 tional thereunto, and inconsistent with, the pro-
11 visions of this act; and all acts and parts of acts
12 establishing a Court of Common Pleas, within
13 and for this State, be, and the same hereby are
14 repealed.

SECT. 2. *Be it further enacted,* That from
2 and after the passage of this Act, there shall be
3 a Supreme Judicial Court in this State, to
4 consist of one Chief Justice, and four Associate
5 Justices, each of whom shall be an inhabitant
6 of this State, of sobriety of manners and learned
7 in the law, to be appointed and commissioned
8 as is by the Constitution provided; and they,
9 or any one of them, except in cases herein oth-
10 erwise provided, shall be, and hereby are con-
11 stituted a *Court*, having cognizance of all crimes,
12 offences, and misdemeanors whatever of a public
13 nature, and of all suits, actions, pleas, and ap-
14 peals, now pending, or which may be hereafter
15 commenced between the citizens of this State,
16 or the State and any citizen thereof; whether
17 the same be civil or criminal, real, personal, or
18 mixed; over which the Supreme Judicial Court,
19 or Court of Common Pleas heretofore existing,
20 have had cognizance and jurisdiction: And it
21 shall be the duty of said Court to try all causes
22 before them, according to the rules of law and
23 justice; and to give such judgment and award
24 such punishment, process, or execution, as is by
25 law provided.

SECT. 3. *Be it further enacted,* That in all
 2 capital trials, and aggravated felonies, where
 3 legal punishment extends to death or imprison-
 4 ment for life, not less than three Justices shall
 5 constitute a quorum for holding the Court : And
 6 in all cases, where by this act the presence of
 7 more than one Justice is required, in absence of
 8 the Chief Justice, the senior Justice present,
 9 shall preside in said Court.

SECT. 4. *Be it further enacted,* That from
 2 and after the passage of this act, as many terms
 3 of the Supreme Judicial Court shall be holden
 4 annually in each of the several Counties of this
 5 State, until otherwise ordered by law, as there
 6 have been terms of the Court of Common Pleas
 7 within the same Counties, and at the same
 8 times and places; to be holden by one Justice
 9 thereof, for the trial of all Jury causes, those
 10 only excepted in the third section of this act.
 11 And unless in cases of death, illness, or other
 12 disqualification, diminishing the efficient mem-
 13 bers of the Court, no one Justice shall hold
 14 more than two terms in any County, for the trial
 15 of causes by Jury, during the same year.

SECT. 5. *Be it further enacted,* That all ac-
2 tions, suits, processes, appeals, matters and
3 things whatever, between party and party,
4 which may have been commenced, and pending,
5 by writ, indictment, recognizance, bill, petition,
6 appeal, or process, of any and every kind what-
7 ever, in either of said Courts of Common Pleas,
8 or Supreme Judicial Court, repealed by the
9 first section of this act; or which might have
10 been returnable to, or had day in either of the
11 Courts aforesaid, be, and the same hereby are
12 made pending in, and returnable to the Supreme
13 Judicial Court, by this act established : And
14 all writs, recognizances, warrants, executions,
15 and processes of every kind so made pending
16 and returnable, shall, after the passage of this
17 act, be fully acted upon and prosecuted to final
18 judgment and determination in the Supreme
19 Judicial Court hereby created; in the several
20 Counties where instituted, returnable, or pend-
21 ing; unless such questions and suits at law, not
22 cognizable by Jury, whose determination and
23 adjudication are otherwise provided for in this
24 act.

SEC. 6. *Be it further enacted,* That the Su-

2 preme Judicial Court hereby established, may
3 issue all manner of writs, executions, certificates,
4 and processes whatever, for carrying into effect
5 and authenticating any judgment, order, or
6 adjudication whatever, which may have been
7 rendered in either of the Courts repealed by
8 this act ; which writs, executions, certificates,
9 and processes, when so issued, shall be of the
10 same effect, and be executed, levied, and ex-
11 tended, in the same manner as if issued on any
12 judgment, order, or adjudication of the Court
13 hereby created. And all records and documents
14 of the Courts of Common Pleas and Supreme
15 Judicial Court by this act repealed, now re-
16 maining in the offices of the Clerks of said
17 Courts in the several Counties of this State,
18 shall be placed and remain under the authority
19 and control of the Supreme Judicial Court
20 hereby established ; in the same manner and
21 for the same purposes as the records and docu-
22 ments of their own proceedings ; and the Clerks
23 of said Court shall have the same power in re-
24 lation to the one as the other of such records and
25 documents.

SEC. 7. *Be it further enacted,* That the
 2 same Supreme Judicial Court may, by writ of
 3 certiorari, error, or other legal process, cause to
 4 be brought before them the records of sentence,
 5 orders, decrees, or judgments of any Courts of
 6 inferior civil or criminal jurisdiction ; and may
 7 proceed, order, and award thereon, as is or
 8 may be by law established and provided :—And
 9 the same Supreme Judicial Court is hereby
 10 empowered to impose all oaths and affirmations
 11 necessary for promoting justice between party
 12 and party, for the conviction and punishment of
 13 offenders, and the due execution of the laws ;
 14 and to punish at the reasonable discretion of the
 15 Court as well all contempts against the authority
 16 of the same, as all crimes and offences at com-
 17 mon law, not enumerated and whose punishment
 18 is not prescribed by the special statute : And
 19 the Court shall have power to issue writs of
 20 prohibition and mandamus to all Courts of in-
 21 ferior judiciary powers, and all processes accord-
 22 ing to law, which may be necessary for the
 23 furtherance of justice and the due execution of
 24 the laws of the land.

SEC. 8. *Be it further enacted,* That all writs

2 and processes of the Supreme Judicial Court
3 hereby created, shall be in the name of the
4 State of Maine, and bear test of some Justice
5 thereof, who is not a party to the suit; and they
6 shall be under the seal of said Court, and signed
7 by the Clerk thereof.

SEC. 9. *Be it further enacted,* That there
2 shall be holden annually one Law-Term of the
3 same Supreme Judicial Court, for the Counties
4 of Washington, Penobscot, Hancock, and Wal-
5 do, on the second Tuesday of May, at Bangor,
6 in the County of Penobscot; and one Law-
7 Term, at Augusta, in the County of Kennebec,
8 on the first Tuesday of January annually, for
9 the Counties of Lincoln, Kennebec, and Som-
10 erset; and one Law-Term in each year for the
11 Counties of York, Cumberland, and Oxford, at
12 Portland, in the County of Cumberland, on the
13 second Tuesday of September; at which
14 Law-Terms it shall be the duty of all the Jus-
15 tices of said Court to be present, if practicable;
16 and in which all appeals, applications for new
17 trials, petitions for review, writs of error, and
18 bills of exceptions, or other legal process not
19 triable by Jury, pending, or which may be here-

20 after pending, in the Counties aforesaid, shall
21 be heard, tried, adjudicated, acted upon and
22 finally determined ; each within the precincts
23 hereby prescribed, where the same may arise or
24 be pending ; unless such matters and questions
25 of law continued for advisement or Law-argu-
26 ment in other Counties, by order of Court ;—
27 in as full and ample manner as pertained to the
28 cognizance, control, authority, and jurisdiction
29 of the late Supreme Judicial Court of this
30 State :—And the same Court hereby established
31 shall issue such writs, executions, decrees, orders,
32 awards, and processes, as shall be necessary for
33 carrying into full effect and determination, its
34 decisions upon all questions and matters of law
35 submitted to their adjudication ; and where
36 reviews are ordered, new trials granted by Jury,
37 or further proceedings directed, all such cases
38 shall be remanded back for trial or further hear-
39 ing, to the Counties where the same originated.
40 And it shall be the duty of the Clerks of the
41 Courts in the several Counties of this State, to
42 furnish for the use of said Court, at the Law-
43 Terms thereof holden as aforesaid, full and
44 authentic Dockets of all causes for Law-argu-
45 ment and determination now pending, or that

46 may be hereafter pending before the same, in
 47 their respective Counties ; and to furnish on
 48 reasonable demand to the parties or their attor-
 49 nies, such copies of the records and proceedings
 50 therein, as may be required for a full and im-
 51 partial hearing and determination of the same.

SEC. 10. *Be it further enacted*, That it shall
 2 be the duty of the Attorney General to appear
 3 in behalf of the State in all suits where the
 4 State may be a party, at all Law-Terms of the
 5 same Supreme Judicial Court, and at any term
 6 thereof where any trial, cause, or indictment
 7 may be pending, requiring the legal attendance
 8 of a full Court. And the County Attornies of
 9 the several Counties in this State are hereby
 10 vested with the same powers and authority, and
 11 required to perform the same duties in the said
 12 Supreme Judicial Court, holden in their respec-
 13 tive Counties by one Justice thereof, as by law
 14 devolved upon them in the Court of Common
 15 Pleas before the passage of this act.

SEC. 11. *Be it further enacted*, That if it
 2 shall appear to any Justice of the Supreme
 3 Judicial Court hereby created, at any term
 4 thereof holden for the trial of civil and criminal
 5 suits by Jury, that any murder, capital felony,

6 or aggravated offence, has been committed with-
7 in the County where the Court is so holden,
8 whose punishment by the laws of this State is
9 death or imprisonment for life, he shall, as soon
10 as may be, communicate information thereof to
11 the Chief Justice and Associate Justices of the
12 same Court, and to the Attorney General, and
13 appoint such time for the trial of such crimes
14 and offences as may best subserve the vindica-
15 tion of the law and the prompt dispensation of
16 justice. And it shall be the duty of the Attorney
17 General and at least three Justices of said Court,
18 to be present and hold the Court at such trial.
19 And no cause shall proceed at any Law-Term of
20 said Court, or at any trial by Jury involving the
21 life or perpetual imprisonment of the Citizen, un-
22 less a majority of said Court shall sit in judgment,
23 and assent by a majority of the quorum present,
24 to the sentence and determination thereof. And
25 when no quorum of said Court is present at the
26 opening of any Law-Term thereof, or at any
27 trial by Jury requiring a full Court, the Justice
28 or Justices present, may adjourn the same from
29 day to day till a quorum appear ; and when
30 through sickness or other casualty, the Justice
31 whose duty it is to hold alone any Court for the

32 trial of Jury causes, fails to be present on the
 33 day appointed for commencing said term ; the
 34 Sheriff of the County, or Clerk of the Courts
 35 in absence of the Sheriff, shall adjourn the same
 36 from day to day, until some Justice of said
 37 Court appear to hold the same.

SECT. 12. *Be it further enacted,* That in all
 2 suits and actions hereafter commenced, by writ
 3 or summons, either in the Supreme Judicial
 4 Court, by this act established, or before any
 5 Court or magistrate of inferior judicial authority ;
 6 and the defendant therein does not appear to
 7 continue or contest the same ; unless by tender of
 8 record in said Court, for a sum certain upon
 9 which judgment may be rendered ; but suffers
 10 judgment to go by default, through non-appear-
 11 ance or tender accepted ; the plaintiff in such
 12 suits and defaulted actions, shall have and re-
 13 cover of the defendant therein, no cost for At-
 14 torney-fee, writ, travel, or attendance ; nor shall
 15 he be held liable, or compelled by law, to pay
 16 the plaintiff any other cost, than the fees of
 17 Court, and of the officer who served the process,
 18 as by law established.

SECT. 13. *Be it further enacted,* That in all
 2 suits and actions, hereafter commenced by writ

3 or summons, either in the Supreme Judicial
4 Court, or before any Court or magistrate of in-
5 ferior judicial authority, the defendant in such
6 suits and actions, shall have the right to appear
7 in person or by attorney, on the day said writ
8 or summons is made returnable, before any infe-
9 rior Court or magistrate; and on or before the
10 third day in the first term of the Supreme Ju-
11 dicial Court, before whom said process is made
12 returnable, and enter of record his consent to be
13 defaulted in such suits where he may be a party,
14 for a sum certain, exclusive of costs: And if
15 the plaintiff in such suits refuse to accept the
16 sum thus tendered in default, in full satisfaction
17 of his demand in suit, exclusive of cost; and of
18 record shall signify his intention to proceed to
19 trial, agreeably to rules prescribed by the Court
20 or magistrate before whom such suits and ac-
21 tions may be pending; and after trial and final
22 adjudication had in the same, shall recover no
23 more than the sum tendered in default and inter-
24 est thereon from the time such tender was made;
25 *then*, he shall be liable and held to pay the de-
26 fendant aforesaid, his full costs after tender,
27 taxed according to the laws in force at the time
28 of the passing of this act: But if, after trial and

29 final adjudication in such suits and actions, the
 30 plaintiff recover of the defendant, a sum greater
 31 than that tendered in default, exclusive of in-
 32 terest thereon from the time of such tender;
 33 *then*, he shall also have and recover of the de-
 34 fendant his full costs from the commencement
 35 of the suit, taxed according to the laws of this
 36 State in force prior to the passage of this act.

SECT. 14. *Be it further enacted*, That all
 2 parties, witnesses, and jurors, held, or recognized
 3 to appear at any Court of Common Pleas, be
 4 held and required to appear at the first term of
 5 the Supreme Judicial Court for the Counties
 6 where said Court of Common Pleas should have
 7 been holden, if this act had not passed.

SECT. 15. *Be it further enacted*, That when
 2 at any law term of the Supreme Judicial Court
 3 herein established, holden or to be holden ac-
 4 cording to the provisions of this act, or other
 5 provision of law, any actions may be continued
 6 *nisi* for advisement of the Court or for argument
 7 by agreement of parties, at any term thereof
 8 in any County to a subsequent term of the same
 9 Court in some other County; and the Justices
 10 of said Court shall have determined the same
 11 before the next term of said Court holden for

12 the County where such actions may have been
 13 continued ; it shall be lawful to enter judgment
 14 in said actions as of the last term of said Court
 15 where said actions may have been continued, or
 16 at the next succeeding term. And whenever
 17 the Clerk of said Court in any County shall
 18 enter judgment upon any action out of term
 19 time, by order of court, he shall enter upon his
 20 docket the time when he shall have received
 21 such order ; and all lines created by attachment
 22 upon mesne process in said actions, shall contin-
 23 ue and be in force for and during thirty days after
 24 the then next term of the Supreme Judicial
 25 Court for said County.

SEC. 16. *Be it further enacted,* That the Jus-
 2 tices of the same Supreme Judicial Court shall
 3 severally receive, in full compensation for their
 4 respective services, the annual salary of two
 5 thousand dollars each, to be paid in quarterly in-
 6 stalments out of the public treasury of the State ;
 7 which sum shall not be diminished during their
 8 continuance in office.

SEC. 17. *Be it further enacted,* That there
 2 shall be a Reporter of the Decisions of the same
 3 Supreme Judicial Court, chosen by joint ballot
 4 of both branches of the Legislature during the

5 pleasure thereof, and commissioned by the Gov-
6 ernor and Council ; who shall be sworn to the
7 faithful performance of his duty : And it shall
8 be the duty of said Reporter, by his personal
9 attendance or by any other means in his power,
10 to obtain true and authentic reports of such
11 decisions as may from time to time be made by
12 said Court, and to publish the same whenever
13 they shall compose a suitable volume. And said
14 Reporter shall receive the annual salary of eight
15 hundred dollars, to be paid out of the State
16 Treasury by quarterly instalments ; which sum
17 shall not be diminished during his continuance
18 in office ; and together with the profits arising
19 from the publication of his said Reports, shall
20 be a full compensation for his services aforesaid.

SEC. 18. *Be it further enacted,* That the
2 same Supreme Judicial Court shall and may,
3 from time to time, make, record, and establish
4 such lawful rules and regulations respecting the
5 modes of trial and manner of conducting business
6 before them, as may be dictated by the discre-
7 tion of said Court : The same Court shall also
8 make, establish, and record such Rules and
9 Regulations, and prescribe such fees, conditions,
10 and terms of study, for the admission of Attor-

11 nies and Counsellors at Law practicing before
12 them, as may seem just and expedient to the
13 Justices thereof. And all acts and parts of acts
14 regulating the admission of Attornies and Coun-
15 sellors to the practice of the law, inconsistent
16 with the provisions of this act, be, and the same
17 are hereby repealed.

SEC. 19. *Be it further enacted,* That from
2 and after the passage of this act, no excise shall
3 be levied upon commissions issued to judicial ma-
4 gistrates of this State; and the Clerks of the
5 Courts and Sheriffs of the several Counties there-
6 of, shall thereafter be held and required to pay
7 into the public treasury no part or portion of the
8 fees or emoluments of their respective offices.

SEC. 30. *Be it further enacted,* That the
2 Clerks of the Courts and the Sheriffs of the
3 several Counties in this State, be, and the same
4 hereby are required, as soon as may be after the
5 first day of January in each year, to prepare and
6 make under oath, a Schedule or Exhibit of all
7 fees, perquisites, and emoluments of their re-
8 spective offices, received or receivable by them
8 for the year preceding, methodically and accu-
10 rately arranged, showing the sources whence
11 derived and the amount of income from each

12 specific source ; and to publish one copy thereof
13 in some public newspaper, if any there be, print-
14 ed in the same County, and one other copy in
15 the State Paper, so called. And no person who
16 holds, may have held, or shall hold, either of
17 the offices of Clerk of the Courts, Sheriff, or
18 Register of Probate, in any of the Counties of
19 this State, shall be eligible to appointment, or
20 continued in the same office more than eight
21 years successively.

SEC. 21. *Be it further enacted,* That this
2 act shall not be so taken or construed, as to re-
3 move from office the Justices of the Supreme
4 Judicial Court by this act abolished.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 20, 1885. }

Mr. CHASE of Sebec, had leave to lay upon the Speaker's table, "Bill establishing a Supreme Judicial Court, within this State, and for other purposes," which was twice read, and on motion of Mr. CILLEY, of Thomaston, *Ordered* to lie on the table, and six hundred copies thereof, ordered to be printed for the use of the Legislature.

[Extract from the Journal of the House.]

(Attest:)

JAMES L. CHILD, CLERK.