

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1843.

AUGUSTA:

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1843.

TWENTY-THIRD LEGISLATURE.

No. 30.]

[HOUSE.

AN ACT

INCREASING THE JURISDICTION OF

JUSTICES OF THE PEACE.

[Wm. R. Smith & Co....Printers to the State.]



STATE OF MAINE.

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

AN ACT increasing the jurisdiction of Justices of the
Peace in civil actions, and establishing courts of trial,
in each city, town and plantation, in this State.

*Be it enacted by the Senate and House of Representa-
tives in Legislature assembled—as follows :*

SECTION 1. That there be and hereby is established
in every city, town and plantation in this State, one
or more and not exceeding three courts of trials, each
court to consist of one justice of the peace, who shall
have cognizance of, and exercise jurisdiction over, all
actions civil and criminal within the city, town or
plantation, in which such court or courts are estab-
lished, and that said justice shall keep fair records of
his proceedings, and deliver fair copies thereof when
required ; which being duly certified shall be evidence
of such records in any other court.

SEC. 2. Every city, town, and plantation in this
State shall at their annual meeting in the month of
March or April of each year, select by ballot one or
more and not exceeding three suitable persons, just-

5 ces of the peace, and citizens of such city, town or
6 plantation, who shall be justices of *said courts of trials*,
7 and before whom all actions, civil and criminal, within
8 said city, town or plantation shall be brought, and if
9 any other justice of the peace within said city, town or
10 plantation shall take cognizance of, or exercise juris-
11 diction over any crime or offence, or in any civil ac-
12 tion wherein the justice so selected is not a party or
13 interested, and shall accept any fee or reward therefor,
14 he shall forfeit and pay to the use of such city, town
15 or plantation twenty dollars, to be recovered by infor-
16 mation in any court proper to try the same.

SEC. 3. If any city, town, or plantation shall ne-
2 glect, or refuse to select one or more justices of trials,
3 at their annual meeting, in March or April, then the
4 mayor of such city, selectmen of such town, or asses-
5 sors of such plantation, as the case may be, shall se-
6 lect one or more such justices, and in case of any
7 vacancy during the year, such mayor, selectmen or
8 assessors may in like manner select a person to fill
9 said vacancy, who shall preside in such court in the
10 same manner, as if selected by the said city, town or
11 plantation.

SEC. 4. All justices of the peace so selected, shall
2 have power to hold a court within said city, town or
3 plantation, and may hear and decide causes at their
4 dwelling house, office, or any other suitable place, and
5 the writ in such cases, shall be made returnable ac-
6 cordingly.

SEC. 5. Every justice of the peace within this State,
2 shall have original and exclusive jurisdiction of all
3 civil actions, wherein the debt, or damage demanded
4 does not exceed one hundred dollars; and is author-
5 ized to accept and record a confession of any debt to
6 a creditor, made by a debtor personally, either with or
7 without process, as the parties shall agree, and render
8 judgment on such confession.

SEC. 6. The writ in civil actions and service thereof
2 shall be the same as now provided by law, except, when
3 served in a different county than that in which it is
4 returnable; it shall be served at least fourteen days
5 before trial.

SEC. 7. Demands in set-off, may be filed on the day
2 of trial, in the way and manner provided in chapter
3 115 of the revised statutes.

SEC. 8. Suits before a justice of the peace, must
2 be made returnable within the city town or plantation
3 where the plaintiff or defendant resides, if there shall
4 be any such justice within such city, town or planta-
5 tion; but if there shall not be any such justice within
6 such city, town or plantation, then said summons may
7 be returned and tried in the adjoining or nearest city,
8 town or plantation where such justice may be found,
9 within said county, if either party be an inhabitant of
10 this State.

SEC. 9. If neither party be an inhabitant this State
2 the cause may be commenced and tried in any city,
3 town or plantation within the State.

SEC. 10. Suits commenced before any justice of the
2 peace to recover debts or demands for goods, wares
3 or merchandise sold or delivered, shall be tried in the
4 city, town or plantation where the commodities were
5 so sold or delivered, or where the defendant resides ;
6 and all other actions, where the debt or damage does
7 not exceed dollars, shall be tried in the county
8 where the defendant resides.

SEC. 11. Whenever it shall appear to the satisfac-
2 tion of the justice, before whom a cause is pending,
3 that the defendant was out of the State at the time of
4 the commencement of the suit, and has not returned
5 in season to attend the trial, such justice shall continue
6 the cause not exceeding one month, and such cause
7 may be further continued in the discretion of the jus-
8 tice, unless the plaintiff satisfy said justice that the
9 defendant had sufficient notice of the suit, to enable
10 such defendant to appear.

SEC. 12. When judgment shall be rendered against
2 any person by default and without notice, execution
3 shall not issue, until the plaintiff or some one in his
4 behalf shall enter into a recognizance, with one or
5 more sureties, in double the amount of such judgment
6 to refund such sum, not exceeding the amount of debt
7 or damages in said judgment, as may be recovered by
8 writ of review.

SEC. 13. The writ of review, mentioned in the pre-
2 ceding section, may be commenced before the same
3 justice who rendered the judgment in the original suit,

4 if he be in office in the same city, town or plantation,
5 or if not so in office, before any other justice in said
6 city, town or plantation, at any time within two years
7 after the rendition of said judgment, and served in the
8 same manner as other writs of review.

SEC. 14. On the trial of the writ of review, the
2 original judgment shall be vacated, if the same is in
3 no part satisfied; if it has been fully satisfied it shall
4 be affirmed. But if such judgment has been in part
5 satisfied, the same shall be affirmed for so much as is
6 satisfied, and reversed for the balance.

SEC. 15. The justice shall then proceed to try and
2 determine the original action, in the same manner as
3 if there had been no judgment rendered, and if the
4 original plaintiff has recovered and collected on the
5 judgment more than was due, judgment shall be ren-
6 dered for the defendant to receive such sum with inter-
7 est, his reasonable damages and costs, otherwise such
8 judgment shall be rendered as the nature of the case
9 may require.

SEC. 16. Either party in a suit in civil causes be-
2 fore a justice of the peace, shall be entitled to a trial
3 by jury, when they shall request it, and in all such
4 causes, the jury fees shall be advanced by the plain-
5 tiff, and made up in the bill of costs.

SEC. 17. In all such causes the parties may agree
2 on a jury, but when they do not agree, a jury shall be
3 selected in the following manner. The justice shall
4 write and fold up fourteen ballots, each containing

5 the name of a respectable citizen in the vicinity of the
6 age of twenty one years or upwards ; said justice shall
7 put the ballots in a box and shake them well together;
8 then in presence of the parties, or their attorneys,
9 he shall draw out one, and the person so drawn, shall
10 be one of the jury unless challenged by either party ;
11 and he shall thus proceed until he shall have drawn
12 six, who shall not be challenged ; but if the first
13 twelve be challenged, and the parties do not agree to
14 a choice, the last six shall be the jury ; and when any
15 of the six jurors so drawn, cannot be had, or are dis-
16 qualified by law to act in such case, and the parties
17 do not supply such vacancy by agreement, the justice
18 shall proceed to prepare in the manner before direct-
19 ed, ballots for three times the number thus deficient,
20 which shall be disposed of and drawn as above pro-
21 vided.

SEC. 18. The jurors, selected for the trial of any
2 issue before such justice, shall be summoned by a ve-
3 nire issued by said justice, which venire may be serv-
4 ed in the usual manner by any person designated by
5 such justice, and before entering upon their duties,
6 shall be sworn by said justice, and shall be subject to
7 the same restrictions and regulations as other traverse
8 jurors.

SEC. 19. If any juror, so summoned, shall neglect
2 or refuse to appear, in obedience to such venire, and
3 shall not, within forty eight hours, render to the jus-
4 tice who issued the venire, a sufficient reason for his

5 delinquency, he shall forfeit and pay a fine of two dol-
 6 lars to the treasury of the city, town or plantation
 7 where the cause is tried, to be assessed by such jus-
 8 tice and collected on his warrant, without other pro-
 9 cess.

SEC. 20. A jury empanelled, agreeably to the pro-
 2 visions of this act, is empowered to audit and adjust
 3 all accounts and demands committed to them by the
 4 said justice, and return a verdict for the balance, *pro-*
 5 *vided* said balance, exclusive of costs, does not exceed
 6 one hundred dollars.

SEC. 21. If the justice presiding at a jury trial shall
 2 judge that the jury have mistaken the law, or the ev-
 3 idence material to the issue, he may return them to
 4 a second and third consideration of the cause, and if
 5 the jury insist on their verdict he shall receive it.

SEC. 22. The time set in any such justice summons
 2 for the trial of any cause shall not be earlier than nine
 3 o'clock in the forenoon, nor later than three o'clock
 4 in the afternoon.

SEC. 23. The constable of the city, town, or planta-
 2 tion, in which such justice court is held, shall be the
 3 proper officer of such court.

SEC. 24. No judgment of any such justice shall be
 2 considered legal, unless he shall be present with the
 3 summons, at the place appointed for trial, within two
 4 hours after the time set in such summons, or unless
 5 the case be continued.

SEC. 25. One hour from the time set in the sum-

2 mons for the trial of a civil action, is allowed to the
3 parties to appear; at the expiration of which time,
4 or within two hours after, judgment may be entered
5 by such justice on nonsuit or default, against the party
6 who shall not appear.

SEC. 26. Any time within two hours after judg-
2 ment on nosuit or default, as provided in the preced-
3 ing section, the justice rendering such judgment may,
4 in his discretion, on motion of either party, strike off
5 such nonsuit or default, and revive the action, on such
6 terms as he may judge reasonable.

SEC. 27. Where the amount of a judgment render-
2 ed by such justice shall not exceed twenty dollars,
3 exclusive of costs, he shall have power to issue ex-
4 ecution thereon returnable in sixty days, but when the
5 judgment, exclusive of costs, shall exceed twenty dol-
6 lars, the execution shall be made returnable in ninety
7 days.

SEC. 28. In civil actions, an appeal from the judg-
2 ment of any such justice to the next term of the su-
3 preme judicial court in the county where such judg-
4 ment is rendered, may be taken by either party, if
5 claimed within two hours after the rendition thereof,
6 except in cases as hereinafter provided.

SEC. 29. In civil actions, the party appealing shall
2 at the time of the appeal, give security by way of
3 recognizance to the adverse party, that the appellant
4 shall prosecute his appeal to effect, and answer and
5 pay all intervening damages occasioned by delay to

6 the appellee, with additional costs, if judgment be af-
7 firmed.

SEC. 30. The appellant shall produce and enter in
2 the court to which the appeal is taken, attested copies
3 of the original summons, a copy of the record and of
4 all other papers filed in the cause, as required in chap-
5 ter 116 of the revised statutes.

SEC. 31. Any person having appealed from the
2 judgment of such justice, to the supreme judicial
3 court, may at any time not less than twelve days be-
4 fore the session of said court, tender and pay to the
5 creditor in such judgment, or his agent or attorney, or
6 leave with such justice who rendered the judgment,
7 the amount of such judgment with interest thereon
8 from the time of the rendition of such judgment, to
9 the time of such tender, or may tender to such justice
10 a confession in favor of the appellee, for the amount
11 of the original judgment with interest for the time as
12 aforesaid, and justice's fees for said confession; which
13 confession said justice is required to receive; and is-
14 sue execution thereon, and in either case there shall
15 be no affirmation of the original judgment in the su-
16 preme court.

SEC. 32. No appeal shall be allowed in either of the
2 following cases:

3 *First.* When judgment was rendered by nonsuit or
4 default.

5 *Second.* In civil actions where the judgment or

6 verdict rendered for debt or damage, does not exceed
7 twenty dollars.

8 *Third.* In all causes which have been tried by a
9 jury, as provided in this act, no appeal shall be allow-
10 ed to the party requesting such jury trial, but the oth-
11 er party by filing objections to such jury trial before
12 such jury be drawn shall be allowed an appeal.

SEC. 33. Any such justice on application of any
2 persons or parties, having controversies between them
3 of a civil nature, may issue his rule of reference to
4 such person or persons, as the parties may mutually
5 choose as referees, empowering them to notify the
6 parties and determine the matters so submitted by
7 such rule, and make return of their doings to said
8 justice within ten days after they shall have determin-
9 ed the matters submitted to them.

SEC. 34. The report of such referees, when made
2 pursuant to such rule, and returned to such justice,
3 shall be final and conclusive between the parties, in the
4 matters submitted, and judgment may be rendered by
5 such justice, and execution issued thereon including
6 costs for the party recovering, *provided* no execution
7 shall issue on such judgment, or on any verdict of a
8 jury within twenty-four hours from the time such
9 judgment or verdict was rendered.

SEC. 35. Any such justice may issue all writs, war-
2 rants and precepts necessary to carry into effect the
3 powers granted him by this act, and where no form
4 therefor is prescribed by law, he may frame one in

5 conformity with the principles of law and the usual
6 course of proceedings of courts in this State.

SEC. 36. No judgment rendered by any such jus-
2 tice on the merits of a civil cause within his jurisdic-
3 tion shall be reversed by writ of error or any other
4 process watever.

SEC. 37. Whenever the plaintiff in any civil suit
2 has reason to suspect and does suspect that any per-
3 son or persons has in his or their possession any pro-
4 perty of any description belonging directly or indi-
5 rectly to the defendant, at the request of the plaintiff
6 the said justice shall summon such person or persons
7 to appear at the time and place of trial and there dis-
8 close under oath the amount, condition and situation
9 of such property, and if it shall appear on the investi-
10 gation that he or they have such property belonging
11 to the said defendant in their possession, then he or
12 they shall be adjudged as trustees for the amount that
13 shall be found in their possession, and execution shall
14 issue accordingly.

SEC. 38. No personal property shall be attached on
2 mesne process in this State, except when the defend-
3 ant resides out of the State, or as in cases provided in
4 article 1, chapter 148 of the Revised Statutes.

SEC. 39. The courts provided for in this act, shall
2 be governed in their proceedings in civil actions, by
3 the laws now in force regulating the proceedings of
4 justices of the peace and of the circuit courts in this
5 State, unless otherwise provided by law.

SEC. 40. All municipal and police courts in this
2 State, shall have the same powers and jurisdiction in
3 all civil actions within their respective cities or towns,
4 as justices of the peace selected in said cities or towns
5 in the way and manner provided in this act, and the
6 jurisdiction and powers of judges of such municipal,
7 and police courts, both in civil and criminal matters,
8 are hereby limited and confined to the city, or town,
9 in which such courts are located, and all jurisdiction
10 of such judges over causes either civil or criminal in
11 any other city, town, plantation or unincorporated
12 place, within this State shall cease from and after the
13 passage of this act.

SEC. 41. All causes, either civil or criminal in
2 which such justice as is selected by any city, town or
3 plantation is a party, or interested, may be brought
4 before any justice of peace within said city, town, or
5 plantation, wherein he resides, *provided* there be no
6 other court of trial, or municipal or police court, with-
7 in such city, town or plantation.

SEC. 42. The records of such courts, and files of
2 papers connected therewith, shall be considered the
3 property of the city, town, or plantation wherein
4 such court is held, and each justice presiding over
5 such court, at the expiration of his term shall deliver
6 such records and files of papers to his successor in
7 office, or deposite the same with the clerk of such
8 city, town, or plantation, within three weeks after the
9 expiration of the term for which he was selected to

10 preside over such court, and thereafter shall for every
11 month's neglect, forfeit and pay to the treasurer of
12 such city, town, or plantation, ten dollars, to be recov-
13 ered in an action of debt before any justice of the
14 peace.

SEC. 43. The fees taxable in civil suits and crimi-
2 nal prosecutions before such courts shall be the same
3 as now is provided by law for such suits and prosecu-
4 tions before justices of the peace except as is herein-
5 after provided.

SEC. 44. Each justice of the peace shall be entitled
2 to receive fifty cents for every jury trial before him
3 in addition to the fees now established by law, which
4 shall be in full for drawing jurors, issuing venires,
5 swearing jurors, and all other extra services growing
6 out of such jury trial.

SEC. 45. Venires issued by such justice may be
2 served by a sheriff, constable, or any citizen of the
3 city, town or plantation in which such court is held,
4 and shall receive for such service and return ten cents
5 for every juror upon which such venire is served, and
6 four cents a mile travel each way, and no sheriff or
7 constable shall receive any fee or pay for attendance
8 at such courts in civil causes.

SEC. 46. All jurors attending at such courts shall
2 be allowed one dollar a day for their attendance and
3 no travel; a reasonable time being allowed them for
4 traveling to and from the place of trial.

SEC. 47. No party in any suit tried before a justice

2 as is herein provided, shall be allowed any fee for
3 travel or attendance of himself or counsel.

SEC. 48. This act shall take effect and be in force
2 from and after its approval by the governor. *Pro-*
3 *vided however*, that nothing in this act shall be so
4 construed as to prevent any justice of the peace from
5 prosecuting to final judgment any suit commenced
6 prior to this act going into effect. All acts and parts
7 of acts contrary to the provisions of this act is hereby
8 repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 13, 1843. }

Laid upon the table, and 500 copies ordered to be printed for
the use of the Legislature.

WM. T. JOHNSON, *Clerk.*