

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:

WM. R. SMITH & Co., PRINTERS TO THE STATE.



1843.

TWENTY-THIRD LEGISLATURE.

No. 49.]

[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 Represen-
tatives in Legislature assembled—as follows :*

3 SECTION 1. That there be and hereby is estab-
4 lished in every city, town and plantation in this
5 State, a court or courts of trials, each court to con-
6 sist of one justice of the peace, who shall have cog-
7 nizance of, and exercise jurisdiction over actions civil
8 and criminal within the city, town or plantation, in
9 which such court or courts are established, as is
10 hereinafter provided, excepting those actions where
11 the title of real estate, according to the pleadings or
12 the brief statement filed in the case by either party,
13 may be in question, and each justice shall keep fair
14 records of his proceedings, and deliver fair copies
15 thereof when required; which being duly certified,
16 shall be evidence of such records in any other court.

SEC. 2. When it shall appear, in either of the
2 ways before mentioned, that the title to real estate is

3 concerned or brought in question, the case shall, at
4 the request of either party, be removed to the su-
5 preme judicial court, to be there tried and determin-
6 ed in the same manner, as if it had been originally
7 commenced in that court.

SEC. 3. The party requiring the cause to be re-
2 moved, shall recognize to the other party, in a reas-
3 onable sum with sufficient surety or sureties, with
4 condition, to enter the action at the supreme judicial
5 court, next to be held in the same county ; and,
6 if he fail so to recognize, the justice shall hear and
7 decide the cause in like manner, as if no such request
8 had been made to remove the cause.

SEC. 4. The party so recognizing, shall produce,
2 at the supreme judicial court, a copy of the record,
3 and all such papers as are required to be produced
4 by an appellant; and, if he shall fail so to do, or to
5 enter the action as before provided, he shall, upon
6 the complaint of the adverse party to the said court,
7 be there nonsuited or defaulted, as the case may
8 be; and such judgment shall be rendered as law and
9 justice shall require.

SEC. 5. Every town and plantation in this State
2 having less than five hundred inhabitants according to
3 the census last taken by the United States prior to
4 any election, shall at their annual meeting for the
5 choice of town officers in the month of March or
6 April of each year, select by a majority of ballots
7 given, one suitable person, a justice of the peace, and

8 a citizen of such town or plantation, and every city,
9 town or plantation having five hundred inhabitants,
10 shall select by ballot two persons, justices of the peace,
11 and citizens of such city, town or plantation, who
12 shall be justices of said courts of trials, and before
13 whom all actions, civil and criminal, by this act made
14 cognizable by said justices, shall be brought; and in
15 all cities and towns having five hundred inhabitants,
16 the selection of said justices shall be as follows, to
17 wit: every person qualified by law to vote in town
18 affairs, may ballot for one justice of the peace, to be
19 a justice of said courts of trials, and for one only,
20 and the two justices of the peace having the greatest
21 number of ballots shall be the justices of the said
22 courts of trials for the year next ensuing. And if
23 any other justice of the peace within said city, town
24 or plantation shall take cognizance of, or exercise ju-
25 risdiction over any crime or offence, or in any civil
26 action cognizable as aforesaid, wherein the justice so
27 selected is not a party or interested, and shall accept
28 any fee or reward therefor, he shall forfeit and pay
29 to the use of such city, town or plantation, twenty
30 dollars, to be recovered by information in any court
31 proper to try the same.

SEC. 6. If any city, town, or plantation, shall
2 neglect or refuse to select one or more justices of
3 trials, at their annual meeting in March or April,
4 then the mayor of such city, selectmen of such town,

5 or assessors of such plantation, as the case may be,
6 shall select one or more such justices; and in case of
7 any vacancy during the year, such mayor, selectmen
8 or assessors, may in like manner select a justice to fill
9 said vacaney, who shall preside in such court in the
10 same manner, as if selected by the said city, town or
11 plantation.

SEC. 7. 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,
5 and all processes in such cases, shall be made return-
6 able accordingly.

SEC. 8. Every such justice of trials within this
2 State, shall have original and exclusive jurisdiction
3 of all civil actions, wherein the debt or damage de-
4 manded does not exceed one hundred dollars, and in
5 all criminal causes the same jurisdiction as is now
6 provided by law for justices of the peace, and is au-
7 thorized to accept and record a confession of any
8 debt to a creditor made by a debtor personally, either
9 with or without process, as the parties shall agree,
10 and render judgment on such confession.

SEC. 9. The writ in civil actions and the service
2 thereof shall be the same as is now provided by law,
3 except when served in a different county than that
4 in which it is returnable; it shall be served at least
5 fourteen days before trial.

SEC. 10. Demands in set off may be filed on the
2 day of trial, in the way and manner provided in chap-
3 ter 115 of the revised statutes.

SEC. 11. All processes before such justices of trials
2 must be made returnable within the city, town or
3 plantation where the plaintiff or defendant resides,
4 if there shall be any such justice within such city,
5 town or plantation, except as is hereinafter provided;
6 but if there shall not be any such justice within such
7 city, town or plantation, then the process may be
8 returned and tried in the adjoining or nearest city,
9 town or plantation where such justice may be found,
10 within said county, if either party be an inhabitant
11 of this State.

SEC. 12. If neither party be an inhabitant of this
2 State, the cause may be commenced and tried in
3 any city, town or plantation within the State.

SEC. 13. Suits commenced before any justice of
2 the peace to recover debts or demands for goods,
3 wares, or merchandize, sold or delivered, shall be
4 tried in the city, town or plantation where the com-
5 modities were so sold or delivered, or where the de-
6 fendant resides; and all other actions shall be tried
7 in the county where the defendant resides.

SEC. 14. 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 cost.

SEC. 15. In all such causes the parties may agree
2 on a jury, but when they do not agree, a jury shall
3 be selected in the following manner:—The justice
4 shall write and fold up eighteen ballots, each contain-
5 ing the name of a respectable citizen in the vicinity,
6 of the age of twenty one years or upwards, said jus-
7 tice shall put the ballots into a box and shake them
8 well together; then in the presence of the parties or
9 their attorneys, he shall draw out one, and the per-
10 son so drawn shall be one of the jury unless chal-
11 lenged by either party, and he shall thus proceed
12 until he shall have drawn out six, who shall not be
13 challenged, but if the first twelve be challenged and
14 the parties do not agree to a choice, the last six shall
15 be the jury, and when any of the six jurors so drawn,
16 cannot be had, or are disqualified by law to act in
17 such case, and the parties do not supply such vacancy
18 by agreement, the justice shall proceed to prepare in
19 the manner before directed, ballots for three times
20 the number thus deficient, which shall be disposed of
21 and drawn as above provided.

SEC. 16. The jurors, selected for the trial of any
2 issue before such justice, shall be summoned by a
3 venire issued by such justice, which venire may be
4 served in the usual manner by any person designated
5 by such justice, and before entering upon their du-
6 ties, shall be sworn by said justice, and shall be sub-
7 ject to the same restrictions and regulations as other
8 traverse jurors.

SEC. 17. 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
6 dollars to the treasury of the city, town or plantation,
7 to be assessed by such justice and collected on his
8 warrant without other process.

SEC. 18. A jury empaneled, agreeable to the
2 provisions of this act, is empowered to audit and ad-
3 just all accounts and demands committed to them by
4 said justice, and return a verdict for the balance,
5 provided said balance, exclusive of costs, does not
6 exceed one hundred dollars.

SEC. 19. If the justice presiding at a jury trial
2 shall judge that the jury have mistaken the law, or
3 the evidence material to the issue, he may return
4 them to a second and third consideration of the cause,
5 and if the jury then insist on their verdict he shall
6 receive it.

SEC. 20. The time set in any such justice sum-
2 mons for the trial of any cause, shall not be earlier
3 than nine of the clock in the forenoon, nor later than
4 three of the clock in the afternoon.

SEC. 21. Any sheriff or deputy sheriff of the
2 county or constable of the city, town or plantation,
3 in which such justice court is held, shall be a proper
4 officer of such court.

SEC. 22. The service of all writs cognizable by
2 said justices shall be by personal service on the de-
3 fendant or defendants, and where there are two or
4 more defendants, one or more of whom shall be out
5 of the State at the time of service so that no personal
6 service can be made on him or them, judgment may
7 be made up by said justice against such defendant or
8 defendants, as shall have received personal notice as
9 above provided for, and issue execution accordingly.

SEC. 23. No judgment of any such justice shall be
2 considered legal, unless he shall be present with the
3 writ, at the place appointed for trial, within two
4 hours after the time set in such summons, or unless
5 the case be continued, and any justice of trials may
6 continue such action as is provided by section 14, of
7 chapter 116 of the revised statutes.

SEC. 24. 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 or
4 within two hours after, judgment may be entered by
5 such justice on nonsuit or default, against the party
6 who shall not appear.

SEC. 25. Any time within two hours after judg-
2 ment on nonsuit or default, as provided in the pre-
3 ceding section, the justice rendering such judgment
4 may, in his discretion, on motion of either party,
5 strike off such nonsuit or default, and revive the ac-
6 tion, on such terms as he may judge reasonable, giv-
7 ing due notice thereof to the parties.

SEC. 26. All executions issued by such justice
2 shall be made returnable in ninety days.

SEC. 27. In civil actions, an appeal from the
2 judgment of any such justice to the next term of the
3 supreme judicial court in the county where such
4 judgment is rendered may be taken by either party,
5 if claimed within two days after the rendition there-
6 of, except in cases as hereinafter provided.

SEC. 28. 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
7 affirmed; and shall be allowed ten days to furnish
8 the securities required.

SEC. 29. The appellant shall produce and enter in
2 the court, to which the appeal is taken, attested cop-
3 ies of the original writ, 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. 30. No. appeal shall be allowed in either of
2 the 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 al-
10 lowed to the party requesting such jury trial, but the
11 other party, by filing objections to such jury trial be-
12 fore such jury be drawn, shall be allowed an appeal.

SEC. 31. 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 jus-
8 tice within ten days after they shall have determined
9 the matters submitted to them.

SEC. 32. 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
4 the matters submitted, and judgment may be rendered
5 by such justice, and execution issued thereon, in-
6 cluding costs for the party recovering; *provided* no
7 execution shall issue on such judgment, or on any
8 verdict of a jury, within twenty four hours from the
9 time such judgment or verdict was rendered.

SEC. 33. Any such justice may issue all writs,
2 warrants and precepts necessary to carry into effect
3 the powers granted him by this act; and where no
4 form therefor is prescribed by law, he may frame one
5 in conformity with the principles of law and the usual
6 course of proceedings of courts in this State.

SEC. 34. 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 whatever.

SEC. 35. In all proceedings against corporations
2 service of process shall be made upon the clerk of such
3 corporation and in all other respects the proceedings
4 against them shall be the same as against individuals.

SEC. 36. No personal property shall be attached on
2 mesne process in this State, except when the defen-
3 dant resides out of the State, or as in cases provided
4 in article 1, chapter 148 of the revised statutes.

SEC. 37. 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. 38. 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. 39. 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 the peace within said city, town
5 or plantation, wherein he resides, provided there be
6 no other court of trial, or municipal or police court,
7 within such city, town or plantation.

SEC. 40. 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 such
4 court is held, and each justice presiding over such
5 court at the expiration of his term shall deliver such
6 records and files of papers to his successor in office or
7 deposite the same with the clerk of such city, town or
8 plantation, within three weeks after the expiration of
9 the term for which he was selected to preside over
10 such court, and thereafter shall for every month's ne-
11 glect, forfeit and pay to the treasurer of such city,
12 town or plantation one hundred dollars to be recov-
13 ered in an action of debt before any court proper to
14 try the same.

SEC. 41. The fees taxable in civil suits and crimi-
2 nal prosecutions before such courts shall be the same
3 as is now provided by law for such suits and prosecu-
4 tions before justices of the peace, except as is herein-
5 after provided.

SEC. 42. Each justice of the peace shall be enti-
2 tled to receive fifty cents for every jury trial before
3 him in addition to the fees now established by law,

4 which shall be in full for drawing jurors, issuing ve-
5 nires, swearing jurors, and all other extra services
6 growing out of such jury trial.

SEC. 43. Venires issued by such justice may be
2 served by the sheriff or any deputy sheriff of the coun-
3 ty, or any constable of the city, town or plantation in
4 which such court is held, who shall receive for such
5 service and return ten cents for every juror upon
6 which such venire is served, and four cents a mile
7 travel each way, and no sheriff or constable shall re-
8 ceive any fee or pay for attendance at such courts in
9 civil causes.

SEC. 44. 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. 45. No party in any suit tried before a jus-
2 tice as is herein provided, shall be allowed any fee
3 for writ, travel or attendance of himself or counsel.

SEC. 46. Executions issued by any justice of trials
2 as provided by this act, where the amount of judg-
3 ment exclusive of costs is over twenty dollars, may be
4 satisfied upon real estate, as is provided in the 94th
5 chapter of the revised statutes.

SEC. 47. 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 here-
8 by repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 10, 1843. }

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

WM. T. JOHNSON, *Clerk.*