

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1844.

AUGUSTA:
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1844.

TWENTY-FOURTH LEGISLATURE.

No. 19.]

[HOUSE.

AN ACT

ESTABLISHING

TOWN COURTS.

[Wm. R. SMITH & Co....Printers.]



STATE OF MAINE.

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

AN ACT establishing Town Courts.

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

SECTION 1. There shall be established, in every city, town and plantation in this State, a court or courts of trial, as hereafter provided, each court to consist of one justice of trials, who shall be appointed and commissioned by the Governor, with the advice and consent of the council, and shall hold his office for the term of seven years, according to the provisions of the constitution. Said justice shall have original and exclusive jurisdiction of all suits of a civil nature, where the debt or other matter in demand, does not exceed one hundred dollars, excepting those actions where the title of real estate is put in issue by the pleadings filed in the case, by either party. And each justice shall keep full and fair records of his proceedings, and deliver fair copies thereof, when required: which, being duly certified, shall be evi-

19 dence of as high character as the records of other
20 courts now are by law.

SEC. 2. In every town or plantation having less
2 than five hundred inhabitants, according to the last
3 census of the United States, the governor may ap-
4 point, as aforesaid, one such justice, and in every
5 city, town or plantation, containing more than five
6 hundred inhabitants, *shall* appoint one such justice,
7 and as often as a vacancy may occur. And in every
8 city, town or plantation, having more than two thou-
9 sand inhabitants, he shall, if requested by a legal vote
10 of said town or plantation, legally passed at their
11 annual meeting in March or April, or by the mayor
12 and aldermen of said city, appoint one additional
13 justice for said city or town, and said justices shall
14 hold their offices as before provided.

SEC. 3. All such justices of trials shall have power
2 to hold a court within their several cities, towns and
3 plantations, and may hear and decide causes at their
4 dwelling houses, offices, or any other suitable place,
5 and all process in such cases shall be made returnable
6 accordingly. And all such justices may receive and
7 record the confession of debt made personally by any
8 debtor to any creditor, with or without process, as the
9 parties may agree, and render judgment on such con-
10 fession and issue execution thereon.

SEC. 4. Every such justice of trials, within this
2 State, shall have in all criminal causes, the same ju-
3 risdiction as is now provided by law for justices of

4 the peace. And may take cognizance of simple lar-
5 ceny when the property shall not exceed in value,
6 twenty dollars, and on conviction, award such sen-
7 tence as is provided by law for such offences, and
8 shall have exclusive jurisdiction of all offences against
9 the by-laws of cities and towns.

SEC. 5. The courts created by this act, shall be
2 governed in their proceedings in civil actions, by the
3 laws now in force, regulating the proceedings of jus-
4 tices of the peace and of the District courts in this
5 State, unless otherwise provided by this act. And
6 may issue all writs, warrants and precepts necessary
7 to carry into effect the powers granted them by this
8 act; and when no form therefor is prescribed by law,
9 may frame one in conformity with the principles of
10 law, and the usual proceedings of courts in this State.

SEC. 6. The justices appointed in pursuance of this
2 act, shall appoint the first Monday in each month, to
3 hear and determine all civil causes, wherein the said
4 justices have jurisdiction, and one jury may be sum-
5 moned to hear and determine such causes, at such
6 times and places as directed in the venire. And the
7 time set in any such justice's summons for the trial of
8 any cause, shall not be earlier than nine o'clock in
9 the forenoon, nor later than three o'clock in the after-
10 noon.

SEC. 7. It shall be the duty of each city, town and
2 plantation, to provide and have constantly kept, a jury
3 box, for the use of the courts by this act created, in

4 the manner provided by the 135th chapter of the Re-
5 vised Statutes, except so far as the provisions of
6 that chapter are altered by this act—the names and
7 number of jurors, of not less than twenty four in the
8 whole, and not less than one nor more than four, for
9 every hundred persons in each city, town or planta-
10 tion, according to the last census, taken next before
11 preparing the box—but no person whose name is now
12 in the jury box provided by law, or while the same
13 shall remain therein, shall be placed in the box hereby
14 ordered. And the said cities, towns and plantations,
15 shall cause the said jurors to be selected, and their
16 names placed in said box, within one month after the
17 passage of this act. The jurors required by this act
18 shall be compelled to serve in said court as often as their
19 names are drawn out, as aforesaid, from said jury box.

SEC. 8. Any justice of said court, on any applica-
2 tion made to him as hereinafter provided, shall, four
3 days at least before the time of trial, issue his venire,
4 directed to any sheriff, deputy sheriff or constable, in
5 said town, city or plantation, and such officer, on re-
6 ceipt thereof, shall notify the clerk of said city, town
7 or plantation, to draw from the jury box provided by
8 this act, as many persons to serve as jurors for said
9 court, as may be required by said venire. And said
10 clerk shall, in the presence of said officer, draw out
11 as many tickets as there shall be jurors required. And
12 the said officer shall, at least two days before the
13 sitting of said court, notify the persons there drawn

14 as aforesaid, in the manner now provided by law ; and
15 shall make return of said venire to said court, at or
16 before the time of trial.

SEC. 9. The jurors selected and summoned as
2 aforesaid, shall, before entering upon their duties, be
3 sworn by said court, in the same manner as now pro-
4 vided by law, and shall be subject to the same restric-
5 tions and regulations that are now provided for trav-
6 erse jurors, and shall have like powers.

SEC. 10. A jury empannelled agreeably to the pro-
2 visions of this act, is empowered to audit and adjust
3 all accounts and demands committed to them by said
4 justice, and to return a verdict for the balance, *pro-*
5 *vided* said balance, exclusive of costs, does not ex-
6 ceed one hundred dollars.

SEC. 11. The jury mentioned in this act, may con-
2 sist of six persons, if the plaintiff and defendant, in
3 writing, before said justice of said court, shall so
4 agree before the same is summoned ; and in default
5 of said agreement, it shall consist of twelve persons.

SEC. 12. All process before such justices of trials,
2 shall be made returnable within the city, town or plan-
3 tation where the plaintiff or defendant resides ; and in
4 all cases within the county where some defendant re-
5 sides. If there shall not be any such justice within
6 such city, town or plantation, then the same may be
7 made returnable, and tried in the adjoining or nearest
8 city, town or plantation, where such justice may be
9 found, within said county, if either party be an inhab-

10 itant of this State; and if neither party be an inhab-
11 itant of this State, the cause may be commenced and
12 tried in any city, town or plantation in the State.

SEC. 13. The writ in civil actions and the service
2 thereof, shall be the same as is now provided by law,
3 except that it shall be served at least fourteen days,
4 and if either party be a corporation, thirty days before
5 the return day.

6 Demands in set off may be filed on the day of trial
7 in the way and manner provided in chapter 115 of
8 the Revised Statutes.

SEC. 14. One hour from the time set in the sum-
2 mons for the trial of any civil action is allowed to the
3 parties to appear; at the expiration of which time,
4 the said justice may enter a non-suit or default and
5 render such judgment thereon as to law and justice
6 shall appertain; and said justice may at any time less
7 than two hours from the entry of such non-suit or
8 default, at his discretion, on motion of a party and
9 notice to the adverse party, strike off such non-suit
10 or default upon such terms as to him may appear
11 reasonable.

SEC. 15. Either party in any civil suit before said
2 court of trial, shall be entitled to a trial by a jury,
3 when such party shall request the same of said justice
4 not more than ten and not less than seven days before
5 the time of trial, and in all such causes the jury fees
6 and cost of summoning such jury shall be paid in
7 advance, or the payment thereof secured to the satis-

8 faction of said justice, by the party so requesting a
9 jury, and the said fees and cost shall be made up and
10 allowed in the bill of cost, if the party making said
11 request shall prevail. And any defendant may offer
12 in writing to be defaulted at any time after the service
13 of the writ, and shall be subject to the same liability,
14 and entitled to the same benefit upon said offer, as is
15 provided in the 115th chapter of the Revised Statutes.

SEC. 16. In civil actions, an appeal from the judg-
2 ment of any such justice to the next term of the
3 supreme judicial court in the county where such judg-
4 ment is rendered, may be taken by either party, if
5 claimed within two days from the rendition thereof,
6 except in cases hereinafter provided. And the party
7 appealing shall recognize to the adverse party to prose-
8 cute said appeal with effect, and pay all intervening
9 damages occasioned by delay, with additional cost, if
10 judgment be affirmed, and shall be allowed ten days
11 to furnish the securities required.

SEC. 17. No appeal shall be allowed in either of
2 the following cases, viz :

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

5 *Second*—In all civil actions where the judgment or
6 verdict rendered is not more than twenty dollars, debt
7 or damage.

SEC. 18. Whenever it shall appear by the pleading
2 in any action, that the title to real estate is concerned
3 or brought in question, the case shall at the request

4 of either party, be removed to the supreme judicial
5 court, next to be holden in said county, and there
6 shall be tried and determined in the same manner as
7 if it had been originally commenced in that court.

SEC. 19. The party requiring the cause to be re-
2 moved by appeal, shall recognize to the other party
3 in a reasonable sum with sufficient surety or sureties,
4 conditioned to enter the action at the supreme judi-
5 cial court next to be holden in the same county ; and
6 if he shall fail so to recognize, the justice shall pro-
7 ceed to hear and decide in like manner as if no such
8 request had been made to remove said cause.

SEC. 20. The party so recognizing shall produce at
2 the Supreme Judicial Court, an attested copy of the
3 record, and all such papers as are required to be pro-
4 duced by an appellant, and if he shall fail so to do, or
5 to enter his said action as before provided, he shall
6 upon the complaint of the adverse party, to the said
7 Supreme Judicial Court, be non-suited or defaulted,
8 as the case may be, and such judgment shall be ren-
9 dered thereon, as law and justice shall require.

SEC. 21. Any party aggrieved by any opinion, di-
2 rection or judgment of any Justice appointed in pur-
3 suance of this act, in any matter of law, in a cause
4 not otherwise appealable, may allege exceptions to
5 the same ; and when reduced to writing in a summary
6 way, and being found correct, the exceptions shall be
7 allowed, and signed by the Justice of said court be-
8 fore the adjournment thereof without day ; and all

9 further proceedings in said court shall be stayed, ex-
10 cepting, that any trial before a jury shall proceed
11 until a verdict is rendered; and the excepting party
12 shall recognize as is provided in section sixteen.

13 In such case, the party alleging the exceptions shall
14 enter the action in the Supreme Judicial Court, at
15 the next term thereof in the same county, and pro-
16 duce all the papers, as in the case of appeal; and the
17 Supreme Judicial Court shall have cognizance of the
18 cause, and determine the same, as they may actions,
19 originally commenced in that court, and render judg-
20 ment, or grant a new trial thereon.

21 When the party alleging the exceptions shall fail to
22 enter the actions at the Supreme Judicial Court at
23 the next term, and the adverse party shall enter his
24 complaint; or when the court shall determine the
25 exceptions frivolous, or alleged for delay, the court
26 shall award double costs against the excepting party
27 and increase the damages by adding legal interest.

SEC. 22. 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 matter so submitted by such
7 rule, and make return of their doings to said justice
8 within ten days after they shall have determined the
9 matter submitted to them; and the report of such
10 referees when made pursuant to such rule, and re-

11 turned to such justice, shall be final and conclusive
12 between the parties in the matter submitted, and
13 judgment may be rendered by said justice, and exe-
14 cution thereon including costs for the party recover-
15 ing. But no execution shall issue on such judgment,
16 or on any verdict of a jury, within twenty-four hours
17 from the time such judgment or verdict is rendered.

SEC. 23. The records of the said courts of trial
2 and the files connected therewith, shall be the prop-
3 erty 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 successors in office,
7 or deposit the same with the clerk of such city, town
8 or plantation, within four weeks after the expiration
9 of the term for which he was appointed to preside
10 over such courts, and thereafter shall for every
11 month's neglect, forfeit and pay to the treasurer of
12 such city, town or plantation, one hundred dollars to
13 be recovered in an action of debt before any court
14 proper to try the same.

SEC. 24. When any execution shall issue from the
2 said courts of trial, it shall be made returnable in
3 ninety days ; and all executions for any sum exceed-
4 ing twenty dollars, debt or damage, may be satisfied
5 by levying the same upon the real estate of the debtor,
6 as is provided for in the 94th chapter of the Revised
7 Statutes.

SEC. 25. All jurors attending at such courts shall be

2 allowed seventy five cents for each case brought be-
3 fore them, and the same fees for travel as is allowed by
4 law to witnesses in said court; and the said justice
5 shall make up the account of attendance of jurors, and
6 pay the same out of the money placed in his hands
7 by the parties claiming such jury. All jurors attend-
8 ing court as aforesaid, shall be entitled to receive the
9 above fees whether any suit is or is not brought before
10 them.

SEC. 26. Each justice aforesaid shall be entitled to
2 receive seventy five 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. 27. The same fees which are allowed for like
2 processes in justice courts, to parties, officers and
3 witnesses, shall be allowed by this court, except as
4 hereinafter provided.

SEC. 28. Any sheriff or deputy sheriff of the county,
2 or constable of the city, town or plantation in which
3 such court of trial is held, shall be a proper officer of
4 such court; and in case no officer shall be in attend-
5 ance at such court, the said justice may appoint some
6 suitable person to take charge of the jury; and such
7 person shall be duly sworn and allowed the same pay
8 as jurors; and in no case shall any officer receive any
9 greater fee for attending said court and taking charge
10 of jurors, than is allowed to said jurors.

SEC. 29. Any justice appointed under this act may
2 appoint and employ at his own expense, a recorder,
3 who shall be a justice of the peace for said county,
4 duly qualified and sworn; and in case of absence
5 or sickness of the said justice of trials, the recorder
6 shall exercise all the powers of said justice except the
7 trial of issues in civil actions. In case of the death
8 of said justice of trials, the said recorder shall have
9 all the powers, be liable to all the duties, and entitled
10 to all the fees for said duties, until a justice of trials
11 shall be commissioned and sworn.

SEC. 30. No justice of the peace or judge of any
2 police or municipal court in any city, town or planta-
3 tion, wherein said court of trial shall be established,
4 shall exercise any civil or criminal jurisdiction, except
5 under the authority of the United States, under a
6 penalty of twenty dollars, to the use of the city, town
7 or plantation, where the offence is committed, to be
8 recovered in an action of debt, in any court proper
9 to try the same.

SEC. 31. No judgment of any such justice of trials
2 shall be valid, unless he shall be present with the writ
3 at the place appointed for trial, within two hours after
4 the time mentioned in such writ, unless the case be
5 continued, and said justice is authorized to grant
6 continuances, in conformity with the provisions of
8 section 14, chapter 116, of the Revised Statutes.

SEC. 32. All causes either civil or criminal in which
2 any justice appointed by virtue of this act is a party

3 or interested, may be brought before any justice of
4 the peace within any city, town or plantation, where-
5 in said justice of trials resides, provided there be
6 no other court of trials, within such city, town or
7 plantation.

SEC. 33. This act shall take effect and be in force
2 from and after its approval by the governor, so far as
3 to authorize the appointment of the justices for the
4 said courts. But this act shall not be so construed as
5 to prevent any justice of the peace or judge of any
6 municipal or police courts from prosecuting to final
7 judgment any suit commenced prior to this act taking
8 effect; and to renew from time to time all executions
9 which may have been issued by said justices or
10 judges.

11 All acts and parts of acts, contrary to the provisions
12 of this act, are hereby repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 3, 1844. }

ORDERED: That 800 copies of the foregoing Bill, be printed
for the use of the Legislature.

WM. T. JOHNSON, *Clerk.*