

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Wm. F. Hill
DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1856.

PART SECOND.

Augusta:

FULLER & FULLER, PRINTERS TO THE STATE.

1856.

THIRTY-FIFTH LEGISLATURE.

SENATE.

No. 5.

IN SENATE, Feb. 6, 1856.

THE Joint Standing Committee on the Judiciary, to whom was referred an order instructing them to inquire into the expediency of repealing an act approved March 16, 1855, establishing a Police Court in the city of Portland, and in its stead establishing a Justice's Court with limited jurisdiction, have had the same under consideration, and ask leave to

REPORT:

Prior to the year 1855, a Municipal Court had been established in Portland for thirty years, having, during all that period, substantially the same jurisdiction and organization. It was constituted upon the simplest theory of a proper Municipal Court, being merely an arrangement, by which those civil and criminal causes and matters, which otherwise would have been cognizable by all the justices of the peace residing in Portland, were required to be brought before one magistrate—this magistrate being paid by a salary instead of by fees, and having a clerk, to keep his records, and to act occasionally in his absence.

A Justice's Court established for such objects, in the midst of a populous town or city, is manifestly advantageous to the public interest, in securing a more prompt, economical and uniform administration of justice.

Promptness is secured by having a salaried magistrate, always in readiness for business; uniformity of practice and decision in the same locality could not be obtained, if all the justices of

the peace within the locality, were allowed to try causes, and economy is unquestionably promoted by the removal of all inducement to multiply cases and exaggerate fees, as well as by having the business done systematically, and by experienced
ers.

It follows, manifestly, that a court so constituted, is a public, county court. The magistrate, or judge, is accountable to the authorities of his county, for all fees, forfeitures and fines, substantially in the same manner as any justice of the peace; his salary is paid from the county treasury—in other words, he pays over to the county all the receipts of his court, over and above the amount of the salary—and the various expenses and charges attending the operations of the court, are ultimately borne by the county and the State, as in the case of all the other courts of law for the administration of public justice, of whatever grade.

The practice, which has sprung up, of late years, by which the expenses of some of the municipal and police courts in the State, are made chargeable, wholly or partly, upon the particular cities or towns where they are located, had never obtained in respect to the Municipal Court of Portland. It was always a county court. The city had nothing whatever to do with its receipts or its expenses, with its officers or their salaries.

This organization and arrangement were entirely satisfactory to all concerned. In 1853–4 a particular investigation was made by the county authorities of Cumberland county, which resulted in showing the true legal relation of this court to the public to be as above stated, and showed also, that the court for a series of years had yielded a net income to the county. In that year, the salary of the judge was raised two hundred dollars, and the county commissioners caused a building to be erected on the county lands for the accommodation of the court.

During the thirty years of the existence of that court, no movement was ever made to enlarge, or materially to vary its jurisdiction. It always remained a court of the same grade as that of a justice of the peace,—having no civil jurisdiction in

cases above twenty dollars, and no criminal function except to try and sentence for minor offences, and to bind over for offences triable in the higher courts:

With this extent of jurisdiction, all were satisfied. It fully answered all the purposes for which the court was constituted.

At the session of the Legislature in 1855, on the 16th day of January, a bill was introduced into the House, on leave, by one of the representatives of Portland, entitled, in substance, to establish a Police Court in that city, and to abolish the then existing Municipal Court. This bill was in the hand writing of the present mayor of Portland, then a private citizen, and was not accompanied by any petition, or order, or any introductory proceeding whatever. It was referred to the Standing Committee on the Judiciary, on the same day.

It purported to establish a court with a new name, but having no material difference in jurisdiction or function, from the existing court, with the single exception, that the judge was empowered to try and sentence on complaints for larceny, up to the extent of one hundred dollars value of property stolen.

On the 30th of January, a fortnight later, a petition was presented, signed by a considerable number of citizens of Portland, in which the petitioners "respectfully and earnestly request that the present Municipal Court of this city may be abolished, and a Police Court created in its stead."

These are the exact and only words of the petition. No reasons are assigned for the change proposed.

This petition having also been referred to the Committee on the Judiciary, that Committee reported on the 7th of March, "*legislation inexpedient.*"

On the same day, by vote of both branches, this decision of the Committee was reversed, and leave was given to bring in a bill.

A bill was accordingly brought in; and on the 16th of March became the law now standing on the statute book, entitled "An act to abolish the Municipal Court in the city of Portland, and to establish a Police Court in said city."

Upon what responsibility this bill rested, as to its authorship and details, is not now known, except from rumor and inference. Its passage was strenuously resisted by the Chairman of the Committee on the Judiciary, a senator residing in Portland. Only a few citizens of Portland had any definite knowledge of the contents of the bill until after its passage.

It was found, on inspection, after it became a law, that the jurisdiction was very greatly enlarged beyond the former limitation, and that the relation of the court to the public and the State was almost totally changed.

The civil jurisdiction was so extended as to embrace, concurrently with the Supreme Court, cases up to one hundred dollars, with trial by jury for all cases above twenty dollars, and four jury terms in a year.

There was also a material extension of the jurisdiction in criminal cases, but without provision for jury trial of such cases.

The jurisdiction as to persons, was so extended beyond any thing ever before attempted in a justice's court, that both plaintiff and defendant might reside any where else in the State, or in the world, if only service should be made on a trustee, residing in Cumberland county, in the cases above twenty dollars, and on a trustee in the city, in cases under twenty dollars.

This extent of jurisdiction might not have been a matter so much to be complained of, in itself, if the court had been made strictly a public establishment, with its expenses chargeable upon the county and the State. But, by a singular inconsistency, the entire expenses of the administration of justice in this court, were cast upon the city of Portland.

Out of the treasury of that city were to be paid the salaries of the Judge and Recorder, the pay of jurors, the cost or rent of a court room, the attendance of officers in charge, and all the incidental expenses.

The inconsistency of this is yet more striking in respect to the criminal business of the court. Elsewhere, if a justice of the peace were to try or examine and bind over a person

charged with an offense, the magistrate would be paid by the county and the State. But by the anomalous constitution of this court, the administration of the criminal justice of the State, within the city of Portland, and before this court, was made a charge upon the city treasury, the city being holden, at the same time, under the general law, to pay *its share* of all the other criminal expenses of the county and the State.

It is true, that the act in question *affects* to provide, that all fines and forfeitures arising out of trials in this court shall be paid into the city treasury and be applied to the payment of the expenses and salaries.

This arrangement is open to the very grave objection, that it gives to the officers of the court, as inhabitants of a local municipal corporation, a strong inducement to multiply cases, and to exact fees, forfeitures and penalties, so as to lighten the burden upon the city treasury, or even to create a revenue to the city. It tends to excite a disposition in the inhabitants of the city, to value the court, if it is a source of revenue, or to dislike it, if it becomes a burden.

All experience shows, that, a court of mixed civil and criminal jurisdiction, having jury trials, and doing business in accordance with that constitution, never pays its expenses.

The arrangement by which the city is charged with the expenses of the court, is at variance also with the primary ideas of all our judicial institutions. The administration of justice, in every State, having a free constitutional system, is a general charge upon the whole state, or upon those divisions of the State, which, as counties, have been established, coeval with the common law, for this very purpose.

To require a city or town to support a court of justice, as it supports its poor house, or fire department, is far more incongruous, than it would be to require such city or town, after providing for its own paupers, to pay a large proportion of the pauper bills of every other town in its county.

We have stated that the police court act of 1855, *affects* to provide that all fees and forfeitures arising out of trials in that

court. should be paid into the city treasury. This qualified statement is necessary to be made, for, although such is the explicit provision of the 15th section of the act, yet the 27th section of the act, commonly called "the liquor law," which was approved on the same day, March 16th, provides with equal explicitness, that all fines, penalties and costs, and all sums paid on recognizances, under that act, shall be paid into the county treasuries, for the use of the State.

Inasmuch as all business arising in Portland, under the liquor law, must be in the police court, this conflict of provision as to the disposal of fines and penalties, becomes quite material in determining the magnitude of the burden cast upon the city. In what manner, these discordant statutes have been harmonized in fact, is not publicly known.

The provision for jury trials, in this court, in civil causes, has not attracted public favor, and very few such trials have been had, or sought for. For causes not difficult to imagine, plaintiffs having their option to bring their cases either in the supreme court, or in this police court, appear to have chosen the former tribunal.

In view of these facts and considerations, the committee, having regard to what they understand to be the correct principles of an establishment for the administration of justice, having regard also, to the well understood wishes of a great majority of those locally interested, and deeming it wholly inadvisable to attempt the correction of such incongruities and anomalies as are found in the police court act of last session, by amendments, have determined to recommend the passage of a bill which simply and merely restores the Municipal Court, as it existed for thirty years, prior to the legislation of 1855. To this end, they have had only to copy the sections relating thereto, from the 98th chapter of the Revised Statutes, with an introductory section constituting the court, and a section at the close providing for the transfer of cases.

As to the mode of appointing the judge, the committee have provided for it, by a simple reference to the constitution. If

the amendment voted upon at the last election, providing that "judges of municipal and police courts shall be elected by the people of their respective cities and towns," shall be declared adopted, that amendment will control this appointment at the next election. There may appear to be an incongruity, in electing by the people of a single town, a judge, whose jurisdiction extends throughout a whole county. Inasmuch, however, as every one of the twelve or fifteen municipal and police courts existing in the State at the time that amendment was proposed and voted upon, was a county court, it may be assumed that the advocates of the amendment did not feel concerned with this evident inconsistency. If it shall be found to be adopted as a part of the fundamental law, it must be submitted to, until regularly and intelligently corrected.

In behalf of the committee.

P. BARNES, *Chairman.*

IN SENATE, Feb. 6, 1856.

Read and accepted.

WM. G. CLARK, *Secretary.*

STATE OF MAINE.

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

AN ACT to establish a Municipal Court in the city of
Portland.

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

SECTION 1. There is hereby established a municipal
2 court for the city of Portland, to consist of one judge,
3 who shall be appointed, commissioned and qualified,
4 in the manner provided by the constitution of this
5 state.

SECT. 2. He shall, except where interested, exercise
2 jurisdiction over all such matters and things within
3 the county of Cumberland, as justices of the peace
4 may exercise, and under similar restrictions and limi-
5 tations ; and concurrent jurisdiction with justices of
6 the peace and quorum in cases of forcible entry and
7 detainer in said county ; and exclusive jurisdiction
8 where both parties interested, or the plaintiff and a
9 person sued as trustee, are inhabitants of Portland.

SECT. 3. He shall not, in any case, act as counselor
2 or attorney in any court.

SECT. 4. The said court may take cognizance of
2 simple larcenies, where the property alleged to be
3 stolen shall not exceed in value twenty dollars, and
4 on conviction award such sentence as is by law pro-
5 vided for such offenses ; and have exclusive jurisdic-
6 tion of all offenses against the by-laws of said city ;
7 and in prosecutions on such by-laws, they need not be
8 recited in the complaint, nor the allegations therein
9 be more particular than in prosecutions on a public
10 statute.

SECT. 5. The same proceedings may be had in the
2 same manner, against persons keeping houses of ill-
3 fame, for the purposes of lewdness or prostitution, on
4 complaint, as before a justice of the peace.

SECT. 6. Any person may appeal, from a sentence
2 or judgment against him, to the then next term for
3 civil or criminal business, as the case may require, of
4 the court having jurisdiction, within said county, by
5 appeal from justices of the peace ; and such appeal
6 shall be taken and prosecuted in the same manner as
7 from a sentence or judgment of a justice of the peace.

SECT. 7. All fines and penalties awarded by said

2 judge, shall be accounted for and paid over, as in
3 case of those awarded by a justice of the peace.

SECT. 8. The court shall have jurisdiction, though
2 the penalty demanded in any action or prosecution
3 accrues to the city of Portland.

SECT. 9. The municipal court shall be held on
2 Monday and Thursday of each week, at nine of the
3 clock in the forenoon, and no civil process shall be
4 returnable at any other time.

SECT. 10. There shall be a recorder of the court,
2 who shall always be a justice of the peace, and duly
3 qualified as such, and he shall be appointed by the
4 judge of the court; he shall be duly sworn as recorder,
5 and shall keep a fair record of the proceedings of the
6 court, and deliver copies, when required, for the same
7 fees, which are allowed to justices of the peace.

SECT. 11. When the judge is absent, it shall be the
2 duty of the recorder, and he shall have authority to
3 exercise all the powers of the judge, excepting the
4 trial of issues in civil actions.

SECT. 12. If the judge and recorder are both
2 necessarily absent, the judge may designate some
3 justice of the peace duly qualified, to perform the

4 duties of his office; or if the judge should not so desig-
5 nate a justice of the peace, the recorder may do it.

SECT. 13. When the office of judge shall be vacant,
2 the recorder shall finish the business pending before
3 the court; and, during the continuance of such
4 vacancy, the justices of the peace residing in the city
5 of Portland may perform all acts and duties apper-
6 taining to the office of justice of the peace.

SECT. 14. No justice of the peace, residing in the
2 city of Portland, except during the vacancy in the
3 office of the judge of said court, as mentioned in the
4 preceding section, shall in any manner take cogni-
5 zance of, or exercise jurisdiction over any crime or
6 offense, or in any civil action, wherein the judge is
7 not a party interested; nor accept or receive any fee
8 or reward therefor; and any such justice of the peace,
9 by violating this section, shall forfeit twenty dollars,
10 to be recovered on indictment.

SECT. 15. But nothing in the preceding section
2 shall be construed as prohibiting the justices of the
3 peace, residing in Portland, from exercising, at all
4 times, all the power and jurisdiction given them by
5 any laws of the United States.

SECT. 16. When the judge is occasionally absent
2 from the room or office, in which the court is held,

3 the recorder shall have power, on proper complaint,
4 to issue warrants for the apprehension of persons
5 charged with any criminal offense, or breach of the
6 peace; and such warrants shall have the same au-
7 thority as if issued by the judge.

SECT. 17. The judge of said court shall receive an
2 annual salary of one thousand dollars, and the recorder
3 an annual salary of five hundred dollars, which sala-
4 ries shall be paid in the manner provided by the one
5 hundred and fiftieth chapter of the revised statutes, in
6 respect to the judge and recorder of the municipal
7 court, formerly existing in Portland.

SECT. 18. As soon as the judge, first appointed
2 under this act, shall be commissioned and qualified,
3 he shall cause a copy of his commission and qualifica-
4 tion, certified by the magistrate before whom he shall
5 take the oath of office, to be filed in the office of the
6 clerk of the judicial courts for Cumberland county;
7 and thereupon the police court of Portland, estab-
8 lished by an act approved March sixteenth, eighteen
9 hundred and fifty-five, shall be abolished. All civil
10 actions, which shall then be pending in said police
11 court, or be returnable thereto, wherein the debt or
12 damage demanded exceeds the sum of twenty dollars,
13 shall thereupon be returnable to, have day in, and be

14 fully acted upon by the supreme judicial court for the
15 county of Cumberland; and all other actions, suits,
16 matters and things which may then be pending in
17 said police court, and all writs, warrants, recogni-
18 zances and processes returnable to, and which would
19 have had day therein had not this act been passed,
20 shall thereupon be returnable to, have day in, and be
21 fully acted upon by the municipal court established
22 by this act; and the said municipal court shall have
23 full power and authority to grant any execution to
24 carry into effect any judgment rendered in the said
25 police court, in the same manner as the said police
26 court might have done had not this act been passed.

SECT. 19. The records of the said police court,
2 and of the municipal court formerly existing in Port-
3 land, shall, upon the abolition of the said police court,
4 be deposited with and kept by the judge of the court
5 established by this act; and he shall grant and certify
6 copies thereof, when required, which shall be evi-
7 dence of the contents of such records, in any legal
8 proceeding.

SECT. 20. This act shall take effect upon its ap-
2 proval by the governor.

STATE OF MAINE.

IN SENATE, February 6, 1856.

ORDERED, That three hundred and fifty copies of the report of the Joint Standing Committee on the Judiciary, and bill submitted therewith, entitled "An Act to establish a Municipal Court in the city of Portland," be printed for the use of the Legislature.

WM. G. CLARK, *Secretary.*