

MAINE STATE LEGISLATURE

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Wm. F. Hill
DOCUMENTS

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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. 32.

STATE OF MAINE.

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

AN ACT to modify and limit the jurisdiction of the
Supreme Judicial Court.

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

SECTION 1. The supreme judicial court, from and
2 after the twelfth day of May, in the year of our Lord,
3 one thousand eight hundred and fifty-six, shall have
4 original and concurrent jurisdiction with the court of
5 common pleas in all real actions, actions of replevin, in
6 which the property replevied exceeds in value the
7 sum of two hundred dollars, trespass on lands, actions
8 by and against towns, and actions where the debt or
9 damage demanded exceeds two hundred dollars, and

10 shall have jurisdiction and cognizance of the crimes
11 of murder, rape, burglary and arson, and of actions
12 removed from the court of common pleas on motion;
13 and shall have exclusive jurisdiction of all suits in
14 equity, and of suits in which any justice of the court
15 of common pleas is a party, of which said court of
16 common pleas would otherwise have original jurisdic-
17 tion.

SECT. 2. If in any personal action, on contract,
2 other than actions between towns, originally com-
3 menced in said supreme judicial court, the plaintiff
4 shall not recover more than two hundred dollars, as
5 debt or damage, he shall not recover any costs.

SECT. 3. For the purpose of hearing and determin-
2 ing all questions of law or equity which may arise in
3 any mode, the state is hereby divided into three judi-
4 cial districts, which shall be denominated the western,
5 middle and eastern districts. The western district
6 shall be composed of the counties of York, Oxford,
7 Cumberland, Franklin and Androscoggin. The mid-
8 dle district shall be composed of the counties of Lin-
9 coln, Sagadahoc, Kennebec and Somerset. The
10 eastern district shall be composed of the counties of
11 Penobscot, Piscataquis, Hancock, Waldo, Washington
12 and Aroostook.

SECT. 4. The supreme judicial court shall be annually holden, by at least four of the justices thereof, for the hearing and determining questions of law or equity, at the several places and times, as follows :

At Augusta, in the county of Kennebec, to hear any cause pending in any county of the state, and in readiness for a hearing upon any question of law or equity ; *provided*, all the parties therein, or their counsel, consent thereto, but not otherwise ;

At Portland, within and for the western district, on the second Tuesday of May ;

At Augusta, within and for the middle district, on the second Tuesday of June ;

At Bangor, within and for the eastern district, on the second Tuesday of July.

SECT. 5. The several clerks of the supreme judicial courts for the counties of Cumberland, Kennebec and Penobscot, for the time being, shall also be the several clerks of the western, middle, and eastern districts respectively, and they shall severally keep a docket for each district, upon which shall be entered all cases at law or in equity, pending in any county in the district, and removed to and entered at the law term, in the order of counties, as follows :

- 10 Franklin, Oxford, Androscoggin, York and Cumber-
11 land, in the western district ;
12 Somerset, Sagadahoc, Lincoln and Kennebec, in the
13 middle district ;
14 Aroostook, Washington, Piscataquis, Waldo, Han-
15 cock and Penobscot, in the eastern district.

SECT. 6. All cases, civil or criminal, in which a
2 question of law shall be raised or reserved, and all
3 cases in equity when ready for hearing, shall be res-
4 pectively marked "law," on the docket of the county
5 where they are pending, and shall be continued on
6 the same until the determination of the questions
7 arising, shall be respectively certified by the clerk of
8 the district, to the clerk of such county.

SECT. 7. The judgment, orders or decrees, of the
2 court at the law term, shall, if made in term time, be
3 entered by the district clerk on his docket, or if pro-
4 nounced at any term held for the trial of causes by a
5 jury in any county, the same shall be certified by the
6 clerk of such county, to the clerk of the district in
7 which the same is pending, who shall enter such
8 judgment, order or decree, on his docket, and shall
9 certify the same to the clerk of the county where the
10 same is pending, and such further proceedings shall

11 there be had, and such judgment shall be entered up,
12 as the order or decree of the court shall require.

SECT. 8. In case said suits, civil, criminal, or in
2 equity, and thus marked "law" and continued on the
3 dockets of the supreme judicial court, for each county
4 respectively, shall not have been entered at the next
5 succeeding law term within the district, by the party
6 whose duty it was so to have entered them, then upon
7 motion and proof thereof, the presiding justice, at
8 the next, or the second succeeding term after the law
9 term, in which they should have been entered, shall
10 enter up such decree, or render such judgment by
11 nonsuit, default or judgment on the verdict, or other
12 mode, as to law and justice shall appertain.

SECT. 9. The justice presiding at terms holden for
2 jury trials, shall hear and determine all causes what-
3 soever, without the intervention of a jury, when both
4 parties shall have so agreed, and entered such agree-
5 ment on the docket.

SECT. 10. All appeals from the decrees of the judge
2 of probate, except such as by law are tried by a jury,
3 which shall be tried as heretofore, and all petitions
4 for review, may be heard and determined by the pre-
5 siding justice, at any term held for the trial of jury

6 causes, subject to exceptions to any matter of law by
7 him so decided and determined.

SECT. 11. When any suit in equity shall be pend-
2 ing in the supreme judicial court, any one of the jus-
3 tices thereof may, as well in vacation as in term time,
4 make all such interlocutory orders and decrees as may
5 be necessary or proper to prepare the case for a final
6 hearing.

SECT. 12. When any question of law shall arise in
2 any cause, civil or criminal, at law or in equity, before
3 the said court when held by one justice, he may upon
4 the motion of either party reserve the same for the
5 consideration of the full court, and report the case or
6 so much thereof as may be necessary for a full under-
7 standing of the question.

SECT. 13. No vacancy hereafter occurring in the
2 office of an associate justice of the supreme judicial
3 court shall be filled by a new appointment until after
4 the number of associate justices shall be reduced to
5 four ; and the supreme judicial court shall thereafter
6 consist of a chief justice and four associate justices.

SECT. 14. The supreme judicial court shall be held
2 annually by one of the justices thereof, for the trial of
3 jury causes and for such other matters as are by law

4 cognizable by one justice thereof, at the several places
5 and times, as follows :

6 At Alfred, within and for the county of York, on
7 the second Tuesday of September.

8 At Portland, within and for the county of Cumber-
9 land, on the first Tuesday of November.

10 At Paris, within and for the county of Oxford, on
11 the second Tuesday of October.

12 At Farmington, within and for the county of Frank-
13 lin, on the fourth Tuesday of September.

14 At Bath, within and for the county of Sagadahoc,
15 on the second Tuesday of December.

16 At Auburn, within and for the county of Andros-
17 coggin, on the fourth Tuesday of December.

18 At Norridgewock, within and for the county of
19 Somerset, on the first Tuesday of December.

20 At Augusta, within and for the county of Kenne-
21 bec, on the first Tuesday of November.

22 At Wiscasset, within and for the county of Lincoln,
23 on the fourth Tuesday of November.

24 At Belfast, within and for the county of Waldo, on
25 the third Tuesday of December.

26 At Bangor, within and for the counties of Penob-

27 scot and Aroostook, on the fourth Tuesday of No-
28 vember.

29 At Machias, within and for the county of Washing-
30 ton, on the second Tuesday of October.

31 At Ellsworth, within and for the county of Hancock,
32 on the fourth Tuesday of September.

33 At Dover, within and for the county of Piscataquis,
34 on the third Tuesday of September.

SECT. 15. All actions, of which the court of com-
2 mon pleas has exclusive jurisdiction, commenced, and
3 all appeals from the judgment of a municipal or
4 police court, or justice of the peace, taken, and all
5 criminal proceedings or processes within the jurisdic-
6 tion of the court of common pleas, pending prior to the
7 time when this act shall take effect, but not at the
8 time entered in court, shall be entered at, and have
9 day in, the first term of the court of common pleas
10 held within and for the same county not less than
11 fourteen days after this act shall take effect.

SECT. 16. The terms for jury trials shall be held
2 under the jurisdiction of the chief justice, by the dif-
3 ferent members of the court in the several counties
4 of the state, so as to divide their services among the
5 different counties as equally as conveniently may be.

SECT. 17. This act shall take effect, and be in force
2 from and after the twelfth day of May next : and the
3 sixteenth, thirty-fifth and thirty-sixth sections of chap-
4 ter ninety-six of the revised statutes,—also an act
5 passed April 9, 1852, entitled “an act concerning the
6 supreme judicial court and its jurisdiction,” excepting
7 the second section thereof,—and the act passed March
8 16, 1855, entitled “additional concerning the su-
9 preme judicial court and its jurisdiction,” and all acts
10 and parts of acts inconsistent with the provisions of
11 this act, are hereby repealed from and after said twelfth
12 day of May. *Provided, however,* that the repeal of
13 said acts and parts of acts shall not in any way affect
14 any suits, petitions, proceedings, or prosecutions pend-
15 ing in court when this act shall take effect ; and the
16 repeal of the act aforesaid passed April 9, 1852, shall
17 not revive any acts repealed by that act.

STATE OF MAINE.

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

AN ACT to establish a Court of Common Pleas.

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

SECTION. 1. There shall be, and hereby is established a court of common pleas, which shall consist of a chief justice and three associate justices; each of whom shall be an inhabitant of this state, of sobriety of manners and learned in the law, appointed and commissioned as prescribed in the constitution; and, as vacancies occur, they shall be filled in the manner provided in the constitution, so that there shall always be one chief justice and three other justices of the said court.

SECT. 2. The justices of the said court shall establish a seal for the said court; and all writs and processes issuing from the said court, shall be in the

4 name of the State of Maine, shall be in the form now
5 in use, shall bear the teste of one of the justices of
6 said court, shall be under the seal of said court, and
7 signed by the clerk thereof in the county where the
8 writ or process shall be returnable ; and shall have
9 force and be obeyed and executed throughout the
10 State.

SECT. 3. Each of the justices of said court shall
2 receive an annual salary of eighteen hundred dollars,
3 which shall be paid to them out of the treasury of the
4 state, in equal quarterly payments.

SECT. 4. The several clerks for the time being of
2 the supreme judicial court, in the several counties,
3 shall also be the clerks of the court of common pleas
4 for said counties, and shall perform all the duties of
5 clerks of said court of common pleas, and shall be
6 entitled to receive for their services the same fees and
7 compensation which now are, or hereafter may be
8 allowed by law to the clerks of the supreme judicial
9 court for similar services.

SECT. 5. The said court of common pleas shall
2 have original and exclusive jurisdiction of all civil
3 actions, in which the debt or damage demanded does
4 not exceed two hundred dollars ; excepting actions in
5 which municipal and police courts, or justices of the

6 peace have jurisdiction, actions of replevin where the
7 value of the property replevied exceeds two hundred
8 dollars, trespass on lands, real actions, actions by or
9 against towns, and actions in which any justice of
10 said court is a party, and shall have original and con-
11 current jurisdiction with the supreme judicial court
12 in all civil actions in which the debt or damages de-
13 manded exceeds the sum of two hundred dollars, and
14 the actions above excepted from the exclusive juris-
15 diction of the court, except those cognizable by
16 municipal and police courts, justices of the peace, and
17 and actions in which a justice of the court is a party.

SECT. 6. The said court of common pleas shall
2 have original and exclusive jurisdiction of all offenses,
3 crimes and misdemeanors, except murder, rape, bur-
4 glary and arson, and those cognizable by municipal or
5 police courts or justices of the peace.

SECT. 7. The said court of common pleas shall
2 also have appellate jurisdiction of all civil actions, and
3 of all crimes and offenses, where an appeal may by
4 law be made from the judgment or sentence of a jus-
5 tice of the peace, municipal or police court.

SECT. 8. The said court of common pleas is hereby
2 fully authorized to administer all necessary oaths,
3 render judgment, and award execution; make all

4 such rules and regulations not repugnant to law, as
5 may be necessary and proper for conducting the busi-
6 ness of the court and administering justice promptly,
7 and do and perform whatever by the constitution and
8 laws it shall be their duty to do, as a court of record
9 and common law jurisdiction.

SECT. 9. Whenever it shall so happen that no
2 justice of said court shall attend at the time and place,
3 at which said court by law, or by adjournment, ought
4 to be held, the sheriff of the county may by oral
5 proclamation, adjourn the said court from day to day,
6 until a justice shall attend.

SECT. 10. If in any action of contract originally
2 commenced in said court of common pleas, the
3 plaintiff shall not recover more than twenty dollars
4 debt or damage, he shall not be entitled to recover,
5 for costs, more than one-quarter of the amount of the
6 debt or damage so recovered ; *provided, however*, that
7 in actions between towns, full costs may be taxed for
8 the prevailing party. And in actions on contract, in
9 which an account is filed in set off, although the dam-
10 ages found for the plaintiff shall not exceed twenty
11 dollars, he shall be entitled to full costs ; *provided*, the
12 jury shall certify in their verdict that the damages are
13 reduced as low as that sum by means of the amount

14 allowed by them, on account of such set off as due
15 upon it.

SECT. 11. There shall be no appeal from any
2 judgment of the court of common pleas upon the
3 verdict of a jury. But any action in which the
4 supreme judicial court has concurrent jurisdiction
5 with this court, may, at any time before it is opened
6 to the jury, be removed to the supreme judicial court,
7 on motion of either party ; and upon such motion be-
8 ing made and allowed, the clerk shall enter the same
9 upon the docket of the supreme court at its next
10 term, and it shall stand and be tried in said supreme
11 court as if it had been originally brought therein.

SECT. 12. The said court of common pleas, at any
2 time before rendering judgment, may set aside the
3 verdict, and grant a new trial of any action, for any
4 cause for which by law a new trial may be granted,
5 or when in the opinion of the court, justice has not
6 been done between the parties, on such terms and
7 conditions as the court may think proper to impose.

SECT. 13. Any party aggrieved by any opinion,
2 direction or judgment, of said court of common pleas
3 in any matter of law, may allege exceptions thereto ;
4 which being reduced to writing in a summary mode,
5 and presented to the court before the adjournment

6 thereof without day, and being found conformable to
7 the truth, shall be allowed and signed by the presid-
8 ing judge; but no trial before a jury shall be pre-
9 vented or delayed by the alleging or allowance of such
10 exceptions, but said trial shall proceed until a verdict
11 is rendered.

SECT. 14. The party alleging the exceptions shall
2 enter the action in the supreme judicial court at the
3 next law term thereof, holden within and for the dis-
4 trict embracing the county in which said action is
5 pending, and produce all the papers in the cause;
6 and said supreme judicial court shall have cognizance
7 of the cause, and decide the questions of law raised
8 therein, and render judgment, or grant a new trial at
9 the bar of said court, and cause such other proceed-
10 ings to be had as to law and justice shall appertain.

SECT. 15. If the party alleging the exceptions
2 shall fail to duly enter the action, and to produce the
3 papers required by law, the supreme judicial court
4 shall, upon the complaint of the adverse party, affirm
5 the former judgment, and increase the damages, if
6 any, by adding legal interest thereon, and award
7 double costs against the excepting party, from the
8 time of filing the exceptions.

SECT. 16. Any person convicted of an offense in

2 the court of common pleas, thinking himself aggrieved
3 by any opinion, direction or judgment of the court in
4 any matter of law, may allege exceptions thereto, in
5 the manner provided in section thirteen; and the
6 person alleging the exceptions, shall recognize with
7 sureties, as the court shall direct, to produce the
8 necessary papers, and prosecute his exceptions before
9 the supreme judicial court, and abide the sentence
10 and order of said court, or, if the cause should be
11 remanded, of the court of common pleas; and the
12 supreme judicial court shall have cognizance thereof,
13 and may affirm the verdict in the court of common
14 pleas, or grant a new trial and enter judgment, or
15 remand the cause to the court of common pleas, as
16 justice may require. If he shall fail to enter and
17 prosecute his exceptions, the court may sentence him
18 to such punishment as the court of common pleas
19 might have inflicted, and issue all necessary process
20 therefor, or adjudge the recognizance forfeited, or
21 both, as justice may require.

SECT. 17. Final judgments in the court of common
2 pleas, either in civil actions, or in criminal cases,
3 may be re-examined upon a writ of error, and reversed

4 or affirmed in the supreme judicial court held within
5 and for the district embracing the county where such
6 judgment was rendered; and when the judgment in
7 any civil action shall be reversed, the supreme judicial
8 court shall render such judgment as the court of
9 common pleas should have rendered.

SECT. 18. No stipulation or agreement, reserving
2 the right to waive the pleadings or statement of the
3 case in the court of common pleas, and plead anew
4 in the supreme judicial court, shall be allowed; and
5 no issue of law joined in the court of common pleas
6 shall be waived by consent of parties after the entry
7 of the action in the supreme judicial court, except in
8 actions which may be removed as provided in section
9 eleven of this act, in which no verdict in said court
10 of common pleas has been rendered.

SECT. 19. Grand and traverse jurors shall be
2 drawn and returned in the manner provided by law,
3 to serve at the terms of said court of common pleas;
4 and the grand jurors so returned shall serve at every
5 term of said court throughout the year.

SECT. 20. The several county attorneys shall be
2 required to attend the several terms of the court of

3 common pleas in their respective counties, and act for
4 the state and for such county in all cases in which
5 the state or the county may be a party.

SECT. 21. All indictments shall be found and re-
2 turned by the grand jurors attending the court of
3 common pleas; and whenever an indictment shall be
4 there found and returned for the crime of murder
5 rape, burglary or arson, if the person accused be not
6 in custody, process shall be forthwith issued from the
7 court of common pleas to arrest him, but the party
8 charged shall not be arraigned nor tried in that court;
9 but the original indictment shall be transmitted to the
10 supreme judicial court at the next term thereof,
11 holden in or for the county where said indictment was
12 found, to be there heard, tried and determined, as if
13 the said indictment had been found and returned in
14 said supreme judicial court; and in case of indictment
15 in this court, for an offense cognizable in the supreme
16 judicial court, the defendant shall be held to answer
17 at the next term of the supreme judicial court for said
18 county, and shall be committed or recognized accord-
19 ingly, and such witnesses as the county attorney may
20 think necessary, shall be recognized for their appear-
21 ance at such supreme court. Commitments and

22 recognizances by justices of the peace, and municipal
23 and police courts, in cases beyond their jurisdiction
24 to decide, shall be to the next term of the court of
25 common pleas in their respective counties.

SECT. 22. The presiding justice shall hear and
2 determine all causes whatsoever, without the inter-
3 vention of a jury, when both parties shall have so
4 agreed, and entered such agreement on the docket.

SECT. 23. The court of common pleas shall be
2 held annually, by one of the justices thereof at the
3 places and times hereinafter mentioned, that is to say,
4 At Alfred, within and for the county of York, on the
5 first Tuesday of January and second Tuesday of July.
6 At Portland, within and for the county of Cumber-
7 land, on the first Tuesdays of March and September.
8 At Paris, within and for the county of Oxford, on
9 the second Tuesdays of February and August.
10 At Farmington, within and for the county of Frank-
11 lin, on the third Tuesday of April and fourth Tuesday
12 of October.
13 At Auburn, within and for the county of Andros-
14 coggin, on the first Tuesdays of April and October.
15 At Bath, within and for the county of Sagadahoc,
16 on the second Tuesdays of April and November.

17 At Norridgewock, within and for the county of
18 Somerset, on the fourth Tuesdays of March and Sep-
19 tember.

20 At Augusta, within and for the county of Kennebec,
21 on the third Tuesday of January and first Tuesday of
22 September.

23 At Wiscasset, within and for the county of Lincoln,
24 on the first Tuesdays of March and October.

25 At Belfast, within and for the county of Waldo, on
26 the fourth Tuesdays of April and October.

27 At Bangor, within and for the county of Penobscot,
28 on the second Tuesdays of February and September.

29 At Machias, within and for the county of Washing-
30 ton, on the third Tuesdays of January and August.

31 At Ellsworth, within and for the county of Hancock,
32 on the third Tuesdays of April and November.

33 At Houlton, within and for the county of Aroostook,
34 on the first Tuesdays of January and August.

35 At Dover, within and for the county of Piscataquis,
36 on the first Tuesdays of May and November.

SECT. 25. Except so far as is inconsistent with the
2 express provisions of this act, the said court of com-
3 mon pleas shall have jurisdiction and cognizance of all

4 matters that were cognizable by the late district court
5 at the time it was abolished.

SECT. 26. This act shall take effect and be in force
2 from and after the thirteenth day of May next; and
3 all acts and parts of acts inconsistent with the provi-
4 sions of this act, be, and the same are hereby repeal-
5 ed, from and after said thirteenth day of May; *provided,*
6 *however,* that the repeal of said acts and parts of acts
7 shall not in any way affect any suits, petitions, pro-
8 ceedings, or prosecutions pending and entered in the
9 supreme court when this act shall take effect.

STATE OF MAINE.

IN SENATE, March 20, 1856.

ORDERED, That 700 copies of the foregoing bills, reported by the Joint Standing Committee on the Judiciary, be printed for the use of the Legislature.

WM. G. CLARK, *Secretary.*