

# MAINE STATE LEGISLATURE

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# DOCUMENTS

PUBLISHED BY ORDER OF

# THE LEGISLATURE

OF THE

STATE OF MAINE.

1867.

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AUGUSTA:  
STEVENS & SAYWARD, PRINTERS TO THE STATE.  
1867.

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# FORTY-SIXTH LEGISLATURE.

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HOUSE.

No. 99.

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-SEVEN.

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AN ACT providing for jury trials before judges of municipal courts and trial justices and prescribing their mode of procedure and jurisdiction.

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

SECTION 1. That judges of municipal courts and  
2 trial justices shall have original and concurrent juris-  
3 diction, power and authority in all civil actions for  
4 debt or damage where the amount in controversy is  
6 fifty dollars or less, and shall proceed and try all  
7 causes presented to them in like manner as is now  
8 provided by law, except where a different mode is  
9 prescribed by the provisions of this act.

SECT. 2. In all civil actions, after the appearance of  
2 the defendant, and before the court shall proceed to

3 inquire into the merits of the cause, either party may  
4 demand a jury to try the action ; which jury shall be  
5 composed of six good and lawful men, having the  
6 qualifications of electors, unless the parties shall agree  
7 to a less number.

SECT. 3. When a jury is demanded, the trial of a  
2 cause must be adjourned until a time fixed for the  
3 return of the jury. If neither party desire an adjourn-  
4 ment, the time must be determined by the justice, and  
5 must be on the same day or within the next two days,  
6 Sundays excepted ; the jury must be immediately se-  
7 lected as herein provided.

SECT. 4. The justice shall write in a pannel the  
2 names of eighteen persons, citizens of the county, from  
3 which the defendant, his agent or attorney shall strike  
4 one name, the plaintiff, his agent or attorney one, and  
5 so alternately, until each shall have stricken six names,  
6 and the remaining six shall constitute the jury to try  
7 such cause ; and if either party neglect or refuse to  
8 aid in striking the jury as aforesaid, the justice shall  
9 strike the same in behalf of such party.

SECT. 5. The justice thereupon shall issue a venire  
2 for the jury, stating the time and place for them to  
3 appear to serve as a jury in a case now pending before  
4 him.

SECT. 6. The constable or sheriff shall serve such  
2 summons by a personal service thereof and return the  
3 same indorsed with the names of the persons summoned  
4 at the time appointed for the trial of the cause.

SECT. 7. Jurors for neglecting or refusing to attend  
2 when properly summoned or refusing to serve when in  
3 attendance shall be liable to the same penalty as for  
4 neglecting or refusing to serve when summoned by the  
5 supreme court.

SECT. 8. The constable or sheriff shall be in attend-  
2 ance on the court during the progress of the trial, and  
3 if from challenge or other cause, the pannel shall not  
4 be full, he may fill the same in the same manner as is  
5 done by the sheriff in the supreme court.

SECT. 9. When a jury shall be in attendance, and  
2 the cause shall be continued, the jurors must attend at  
3 the time and place appointed for trial without further  
4 notice.

SECT. 10. If either party object to the competency  
2 of a juror, the question thereon must be tried in a  
3 summary manner by the justice who may examine the  
4 juror as other witness under oath.

SECT. 11. The justice shall administer an oath or  
2 affirmation to the jury, well and truly to try the mat-  
3 ter in difference between the parties, and a true ver-  
4 dict to give according to the evidence.

SECT. 12. After the jury shall have been sworn,  
2 they shall sit together and hear proofs and allegations  
3 of the parties; and after hearing the same, shall be  
4 kept together in some convenient place, under the  
5 charge of a constable, until they have agreed upon  
6 their verdict, or shall be discharged by the justice.

SECT. 13. When the jury shall have agreed upon  
2 their verdict, they shall deliver it to the justice pub-  
3 licly, who shall enter it upon his docket.

SECT. 14. Whenever the justice shall be satisfied  
2 that a jury, sworn in any cause before him, cannot  
3 agree in their verdict, after having consulted upon it a  
4 reasonable time, he may discharge them, and continue  
5 the cause, and may, if required by either party, pro-  
6 ceed to strike another jury as hereinbefore provided;  
7 the cause shall be continued to such time as the justice  
8 thinks reasonable, unless the parties or their attorneys  
9 agree on a longer or shorter time, or unless they may  
10 agree that the justice may render judgment on the  
11 evidence already heard before him.

SECT. 15. It shall be lawful for the justice before  
2 whom a cause has been tried, on motion, and being  
3 satisfied that the verdict was obtained by fraud, par-  
4 tiality, or undue means, at any time within four days  
5 after the entering of the judgment, to grant a new

6 trial, and he shall set a time for the new trial, of which  
7 the opposite party shall have at least three days notice.

SECT. 16. The opposite party shall also have a rea-  
2 sonable notice of such motion for a new trial, if the  
3 same is not made on the day of the former trial, and  
4 in the presence of such party, such notices to be given  
5 by the applying party. If the new trial shall be  
6 granted, or the jury be unable to agree, the proceed-  
7 ings shall be in all respects as upon the return of the  
8 summons.

SECT. 17. Upon the verdict being delivered to the  
2 justice, and before judgment rendered thereon, each  
3 juror shall be entitled to receive one dollar and fifty  
4 cents per day at the hands of the successful party,  
5 which shall be taxed in the costs against his adversary.  
6 When the jury shall be unable to agree upon a ver-  
7 dict, the same compensation shall be paid them by the  
8 party calling the jury, and the same shall be taxed in  
9 the cost bill against the losing party.

SECT. 18. When parties agree to enter, without pro-  
2 cess, before a justice, any action of which such justice  
3 has cognizance, such justice shall enter the same on his  
4 docket and proceed to trial, judgment and execution,  
5 in all respects in the same manner as if summons had  
6 been issued, served and returned.

SECT. 19. If any debtor shall appear before any  
2 trial justice, without process, and confess that he is  
3 indebted to another, it shall be lawful for such justice,  
4 on the application of the creditor, to render judgment  
5 on such confession against the debtor for any sum not  
6 exceeding fifty dollars.

SECT. 20. Parties having a cause before a trial jus-  
2 tice or judge of municipal court, and previous to the  
3 summoning of a jury for such trial, may agree to have  
4 their cause referred to the arbitrament of one or more  
5 disinterested men, who shall determine the cause on  
6 oath or affirmation, to be administered by the justice.  
7 Such referee or referees shall be summoned in like  
8 manner as is provided for summoning jurors, and such  
9 referee or referees shall be liable to the same penalty  
10 for neglecting or refusing to serve, as are jurors.

SECT. 21. A verdict rendered as provided in the  
2 foregoing section, shall be entered on the docket of the  
3 trial justice or judge of municipal court, and in all  
4 respects shall be binding on the parties as trial by jury.  
5 The fees for services of the referee or referees, shall be  
6 what may be allowed to each by the justice, the whole  
7 amount of which shall not exceed that of jurors.

SECT. 22. Appeals shall be granted to the supreme  
2 court, except in the following cases, which shall be



3 final, to wit: first, where the amount awarded by the  
4 jury is twenty dollars or less; second, where the  
5 debtor has confessed judgment; third, where both par-  
6 ties have agreed on a trial by jury or referees.

SECT. 23. The party appealing, shall within ten  
2 days from the rendition of the judgment, enter into an  
3 undertaking to the adverse party with at least one  
4 good and sufficient surety to be approved by such jus-  
5 tice in a sum not less than fifty dollars in any case,  
6 nor less than double the amount of the judgment on  
7 costs conditioned: first, that the appellant will prose-  
8 cute his appeal to effect and without unnecessary de-  
9 lay; second, that if judgment be adjudged against  
10 him on the appeal he will satisfy such judgment and  
11 costs.

SECT. 24. If the defendant any time before trial,  
2 offer, in writing, to allow judgment to be taken against  
3 him for a specified sum, the plaintiff may immediately  
4 have judgment therefor with the costs there accrued.  
5 But if he do not accept such offer before the trial, and  
6 fail to recover in the action a sum larger than the said  
7 offer, he can not recover costs accrued after the offer;  
8 but costs must be adjudged against him, but the offer  
9 and failure to accept it can not be given in evidence,  
10 to effect the recovery, otherwise than as to costs as  
11 above provided.

SECT. 25. When issue is joined by the defendant, 2 the plaintiff shall be entitled to a trial fee of fifty cents 3 on every ten dollars recovered ; and if the defendant 4 prevail in the action, he shall recover one dollar and 5 fifty cents, to be recovered as cost against the judg- 6 ment debtor.

SECT. 26. In all cases before a trial justice or 2 judge of a municipal court, the plaintiff, his agent or 3 attorney, shall file with such justice a bill of particu- 4 lars of his demand ; and the defendant, if required by 5 the plaintiff, his agent or attorney, shall file a like bill 6 of the particulars he may claim as a set off, and the 7 evidence on the trial shall be confined to the items set 8 forth in said bills.

SECT. 27. The bills of particulars must state, in a 2 plain and direct manner, the facts constituting the 3 cause of action or the claim to be set off.

SECT. 28. The bill of particulars may be amended 2 at any time before the trial, or during the trial, or upon 3 appeal, to supply any deficiency or omission in the 4 items, when, by such amendment, substantial justice 5 will be promoted. If the amendment be made at the 6 time of, or during the trial, and it be made to appear 7 to the satisfaction of the justice by oath, that an ad- 8 journment is necessary to the adverse party, in conse- 9 quence of such amendment, an adjournment must be

10 granted. The justice may also, in his discretion, re-  
11 quire, as a condition of an amendment, the payment of  
12 costs to the adverse party, to be fixed by the justice ;  
13 but such payment can not be required, unless an ad-  
14 journment is made necessary on the amendment.

SECT. 29. All trial justices or judges of municipal  
2 courts of this state shall, for services rendered, be en-  
3 titled to the following fees in addition to what is  
4 already provided by law, to wit: For each person  
5 named in the summons, twenty-five cents ; for venire  
6 for jury, twenty-five cents ; for entering into bond or  
7 undertaking for either party, twenty-five cents ; for  
8 filing papers necessary to be presented by justice, five  
9 cents each ; for trying a jury case, one dollar and fifty  
10 cents.

SECT. 30. Actions before trial justices or judges of  
2 municipal courts, are commenced by summons, or by  
3 the appearance and agreement of the parties without  
4 summons. In the former, the action is deemed com-  
5 menced upon delivery of the writ to the constable or  
6 sheriff to be served, and he shall note thereon the time  
7 of receiving the same. In the latter case the action  
8 is deemed commenced at the time of docketing the  
9 case.

SECT. 31. The style of the summons shall be: "The

2 State of Maine, — County'' ; it shall be dated the  
3 day it is issued, signed by the justice issuing the same,  
4 directed to a sheriff or constable of the town ; must  
5 contain the name or names of the defendant or defend-  
6 ants if known, if unknown, give a description of him  
7 or them, and command the officer serving the same to  
8 summon the defendant or defendants to appear before  
9 such justice at his office in —, at a time specified  
10 therein, and must describe the plaintiff's cause of action  
11 in such general terms as to apprise the defendant of  
12 the nature of the claim against him ; and there shall  
13 be endorsed on the writ the amount for which the  
14 plaintiff will take judgment, if the defendant fail to  
15 appear. If the defendant fail to appear, judgment  
16 shall not be rendered for a larger amount and the costs.

SECT. 32. When a trial justice or judge of municipi-  
2 pal court shall have given a verdict for the plaintiff in  
3 any action tried before him for the sum of twenty dol-  
4 lars or less, either party may demand a trial by jury,  
5 and the justice before whom said trial was made shall  
6 grant the same, conditioned according to the provis-  
7 ions of this act, for the trial of causes by jury.

SECT. 33. In all civil actions brought before the  
2 supreme court for a sum above fifty dollars, and a ver-  
3 dict is rendered thereon for no more than fifty dollars,  
4 no more than five dollars for costs shall be allowed the

5 plaintiff in the case, except he shall have advanced  
6 witness fees, the amount of which may be added to the  
7 costs.

SECT. 34. After filing a bill of particulars with a  
2 trial justice or judge of the municipal court, as pro-  
3 vided in section twenty-six of this act, alleging cause  
4 of action against a debtor, such justice may issue his  
5 summons to the alleged debtor in the following form  
6 or any other that shall give the defendant a clear un-  
7 derstanding of the complaints or charges against him,  
8 to wit:

9 To ———, in the name of the State of Maine, you  
10 are hereby notified to appear before me, a trial justice,  
11 (here state the time and place,) to answer unto ———,  
12 (here insert whether the demand is a note, account or  
13 other matter alleged as the case may be,) and failing  
14 to appear, judgment will be rendered against you for  
15 ——— dollars as alleged by the plaintiff.

16 Dated this ——— day of ———, at ———, in the  
17 county of ———, in the year of our Lord one thou-  
18 sand eight hundred and ———.

19 *Trial Justice or Judge of Municipal Court.*

SECT. 35. Actions shall be brought in the county  
2 where the defendant resides and not more than twenty  
3 miles from his place of residence, if a trial justice can

4 be found within that distance ; if not the nearest one  
5 beyond this limit.

SECT. 36. A summons may be served as is now pro-  
2 vided by law, or an acknowledgment on the back of  
3 the summons by the defendant, which shall be deemed  
4 legal notice.

SECT. 37. The mode of proceedings to carry into  
2 effect the judgments rendered under the provisions of  
3 this act may be the same as now is practiced in justice  
4 courts or the supreme courts of this state.

SECT. 38. The provisions of this act shall go into  
2 effect on the first day of July next.

SECT. 39. All acts and parts of acts inconsistent  
2 with the provisions of this act are hereby repealed.

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## STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }  
February 13, 1867. }

Reported by Mr. BROWN, from the Joint Select Committee on  
Legal Reform.

FRANKLIN M. DREW, *Clerk.*