
FORTY-SEVENTH LEGISLATURE.

HOUSE.

No. 21.

STATE OF MAINE.

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

AN ACT to facilitate the prompt administration of justice by establishing a superior court in the county of Cumberland.

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

SECTION 1. A superior court is hereby established at
2 Portland, within and for the county of Cumberland,
3 consisting of one justice, who shall be an inhabitant of
4 said county, of sobriety of manners and learned in the
5 law ; he shall be appointed, commissioned and quali-
6 fied according to the constitution, and shall reside
7 during his continuance in office, in Portland.

SECT. 2. Said justice shall establish a seal for said

2 court ; and all writs and processes issuing therefrom
3 shall be in the name of the state, of the usual forms,
4 bearing the test of said justice, under the seal of said
5 court, and shall be signed by its clerk : they shall be
6 obeyed and executed throughout the state.

SECT. 3. The clerk for the time being of the supreme
2 judicial court in said county shall also be the clerk of
3 said superior court, and shall receive for his services as
4 such, the fees allowed other clerks for similar services
5 in the supreme judicial court.

6 He shall appoint a deputy approved by said justice,
7 who shall act as clerk of said superior court whenever
8 said court and the supreme judicial court happen both
9 to be in session in said county.

10 And whenever said clerk of the supreme judicial
11 court is absent or the office is vacant, said justice may
12 appoint one to supply the vacancy during such absence,
13 or until an appointment is made by the governor and
14 council, or by the supreme judicial court.

SECT. 4. The sheriff of the county of Cumberland
2 shall attend said superior court unless the supreme
3 judicial court shall be in session in said county, in
4 which case he shall specially designate a deputy ap-
5 proved by said justice of said superior court, so to
6 attend. And whenever it shall happen that said jus-
7 tice is prevented from attending at the time and place

8 at which said court by law or by adjournment ought to
9 be held, said sheriff or such deputy shall by oral proc-
10 lamation adjourn said court from day to day, until said
11 justice shall attend.

SECT. 5. Within said county, said superior court
2 shall have exclusive appellate jurisdiction of civil ap-
3 peals from municipal courts and trial justices ; exclu-
4 sive original jurisdiction of actions of scire facias on
5 judgments and recognizances not exceeding five hun-
6 dred dollars, of all bastardy trials, and of all other civil
7 actions at law not exclusively cognizable by municipal
8 courts and trial justices, where the damages demanded
9 do not exceed five hundred dollars, except complaints
10 for flowage, real actions, actions of trespass quare
11 clausum ; and concurrent original jurisdiction of ac-
12 tions of trespass quare clausum and of proceedings in
13 habeas corpus ; and of all other civil actions at law
14 where the damages exceed five hundred dollars, except
15 complaints for flowage and real actions.

SECT. 6. Said court shall be held on the first Tues-
2 day of every month, excepting June, July and August.
3 Traverse jurors shall be drawn and returned to serve
4 at said terms as in the supreme judicial court, except
5 that the same jurors may be required by the justice to
6 serve for two successive terms.

7 All actions shall be made returnable at one of the

8 three terms next begun and held after the commence-
9 ment of such actions.

10 If the plaintiff desires a jury trial, he shall indorse
11 the same upon his writ at the time of entry. The de-
12 fendant shall, within fourteen days after entry, file his
13 pleadings, and if the plaintiff has not demanded a jury,
14 the defendant shall indorse on his plea his demand for
15 a jury, if he desires one. Whenever a jury shall be so
16 demanded by either party, the clerk shall enter the
17 fact on the docket, and all other cases, except appeals,
18 shall be tried by the justice without the intervention of
19 a jury, subject to exceptions in matters of law, in term
20 time, or if both parties desire, at chambers. The party
21 demanding a jury shall pay the jury fee, and tax the
22 same in his costs, which shall be the same as in the
23 supreme judicial court, if he prevails; but in cases
24 actually disposed of without a verdict, the jury fee, if
25 any has been paid, shall be returned to the party pay-
26 ing it.

27 When a defendant, legally served, does not appear
28 by himself or attorney within the first three days of
29 the term, he shall be defaulted as in the supreme judi-
30 cial court.

31 If the defendant does not file his pleadings as here-
32 inbefore provided, he shall be defaulted on the first day
33 of the next term, after entry, unless the court for good

34 cause shall grant leave to file a plea or shall otherwise
35 lawfully dispose of the action.

36 All actions duly answered to shall be in order for
37 trial at the next term after entry, and shall be so tried,
38 except for good cause.

39 Appeals shall be entered by the appellant as in the
40 supreme judicial court, and a jury fee paid by him at
41 the time of entry, and appeals shall be in order for
42 trial at the first term.

SECT. 7. Exceptions may be alleged as in the su-
2 preme judicial court and entered, heard and determined
3 at the law term held in the western district, provided
4 that when the next law term happens to be held in
5 either of the other districts, the justice of the superior
6 court may, on motion of the party not excepting, cer-
7 tify the exceptions to said next law term, if, in his
8 opinion, they are alleged mainly for delay, but the
9 party so moving shall be deemed to waive his right to
10 be heard in opposition to said exceptions, which shall
11 be entered and determined at said next law term
12 without argument by said party and upon the oral or
13 written argument of the party excepting.

14 Cases certified upon agreed statement of facts, re-
15 ports, and motions for new trials, shall be entered,
16 heard and determined at the next law term in the
17 western district, but any case for the law court may,

18 by agreement of parties, be entered at the next law
19 term held in either district.

20 And all exceptions arising in cases within the ex-
21 clusive jurisdiction of said superior court may be cer-
22 tified at once by said justice to the chief justice of
23 the supreme judicial court, and shall, when so cer-
24 tified, be argued in writing on both sides within thirty
25 days thereafter unless the justice of said superior
26 court shall, for good cause, enlarge the time, and ex-
27 ceptions so certified shall be considered and deter-
28 mined by the justices of the supreme judicial court,
29 as soon as may be.

30 Decisions of the law court on all exceptions and
31 questions from said superior court shall be certified to
32 the clerk of said superior court with the same effect
33 as in cases originating in the supreme judicial court
34 in said county.

SECT. 8. When a demurrer to a declaration is over-
2 ruled, the defendant, notwithstanding he excepts, may
3 plead anew within such time as the justice orders, but
4 in all cases where exceptions are alleged by the de-
5 fendant, the action shall, notwithstanding, remain
6 upon the docket of said superior court and be pro-
7 ceeded with as if no exceptions had been taken, until
8 the case is in such a condition that the overruling of
9 said exceptions would finally dispose of it.

10 And the action shall then be transferred to the law
11 court, or certified to the chief justice thereof, as here-
12 inbefore provided for the hearing and determination
13 of all exceptions arising in any stage of the case.

SECT. 9. The supreme judicial court, sitting as a
2 court of law for the western district, shall have the
3 same jurisdiction of all questions of law, motions for
4 new trials, and questions arising on reports or agreed
5 statements of facts originating in said superior court,
6 as if they had originated in the supreme judicial
7 court for Cumberland county, and said law court sit-
8 ting in either of the other districts shall have the
9 same jurisdiction of all questions and motions certified
10 thereto from said superior court as hereinbefore pro-
11 vided.

12 And all provisions of law and rules of the supreme
13 judicial court relative to the transfer of actions and
14 other matters from the supreme judicial court for said
15 county, or from its docket to the docket of said law
16 court, and all provisions of law and rules regulating
17 proceedings in such cases, and the effect of such pro-
18 ceedings, shall apply to the transfer of actions from
19 said superior court or its docket to said law court, and
20 to the proceedings in such cases, and the effect there-
21 of, except so far as they may be inconsistent with the
22 foregoing provisions of this act.

SECT. 10. Said superior court is hereby authorized
2 to administer all necessary oaths, render judgment,
3 and issue execution, punish for contempt, and compel
4 attendance, as in the supreme judicial court; to make
5 all such rules and regulations, not repugnant to law,
6 as may be necessary and proper for the administration
7 of justice promptly and without delay; and the pro-
8 visions of law relative to the jurisdiction of the su-
9 preme judicial court in said county, over parties, the
10 arrest of persons, attachment of property, the time
11 and mode of service of precepts, proceedings in court,
12 the taxation of costs, the rendition of judgments, the
13 issuing, service and return of executions, and all
14 other subjects, are hereby made applicable and ex-
15 tended to said superior court in all respects, except so
16 far as they are modified by the provisions of this act;
17 and said superior court is hereby clothed as fully as
18 the supreme judicial court with all the powers neces-
19 sary for the performance of all its duties.

SECT. 11. Final judgments in said superior court,
2 may be re-examined in the supreme judicial court on
3 a writ of error, or on petition for review, and when
4 the judgment is reversed, the supreme judicial court
5 shall render such judgment as said superior court
6 should have rendered, and when a review is granted,
7 it shall be tried in said supreme judicial court, which

8 shall have the same power to grant writs of supersedeas
9 of executions issued from said superior court as it has
10 of executions issued from the supreme judicial court.

SECT. 12. In case the justice of said superior court
2 should, by reason of continued sickness, or other cause,
3 be prevented from holding a term or terms of said
4 court, any justice of the supreme judicial may, at the
5 request of said justice of said superior court, hold such
6 term or terms of said superior court in place of the
7 justice thereof. *

8 And during a vacancy in the office of said justice of
9 said superior court, all writs issued from the office of
10 the clerk thereof, shall bear test of any one of the jus-
11 tices of the supreme judicial court.

12 Whenever the justice of said superior court shall be
13 disqualified by interest or other lawful cause from try-
14 ing any cause pending in said court, said case shall
15 thereupon be transferred to the docket of the supreme
16 judicial court for said county, and disposed of in said
17 court according to law.

SECT. 13. This act shall take effect March first,
2 eighteen hundred and sixty-eight, and the first term of
3 said superior court shall be held on the first Tuesday of
4 April, eighteen hundred and sixty-eight.

5 At any term of the supreme judicial court for said

6 county of Cumberland, after the next April term there-
7 of, any action pending therein which would fall within
8 the exclusive jurisdiction of said superior court, as
9 hereinbefore defined and established, with all papers
10 belonging thereto and orders and decrees thereon, may,
11 on motion of either party, be transferred from the
12 docket of said supreme judicial court to the docket of
13 said superior court, and entered, tried and have day
14 therein as if it had originally been commenced therein,
15 provided that the justice presiding in said supreme
16 judicial court believes that a speedier trial may thus
17 be obtained.

18 And upon the taking effect of this act, the jurisdic-
19 tion of the supreme judicial court for the trial of civil
20 cases in said county shall be limited in conformity to
21 the foregoing provisions ; and all acts and parts of
22 acts relating to courts and judicial proceedings shall be
23 modified so far as to give full effect to this act, and all
24 acts and parts of acts inconsistent with this act are
25 hereby repealed.

SECT. 14. The justice of said superior court may be
2 appointed, commissioned and qualified at any time
3 after the passage of this act, and his salary shall be
4 twenty-five hundred dollars, payable quarterly.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 24, 1868. }

Reported by Mr. REED, from the Committee on Judiciary.

S. J. CHADBOURNE, *Clerk.*