

MAINE STATE LEGISLATURE

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Sixty-Fifth Legislature.

HOUSE.

No. 134.

STATE OF MAINE.

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

AN ACT to amend chapter one hundred and thirty-five of the Private and Special Laws of eighteen hundred and seventy-five, entitled "An Act to establish a municipal court in the city of Auburn," as amended by chapter one hundred and eighty-six of the Private and Special Laws of the same year, and chapter fifty-one of the Private and Special Laws of eighteen hundred and eighty-one.

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

SECTION 1. Chapter one hundred and thirty-five of the
2 Private and Special Laws of 1875, entitled "An Act to
3 establish a municipal court in the city of Auburn," as
4 amended by chapter one hundred and eighty-six of the
5 private and special laws of the same year, and chapter

6 fifty-one of the private and special laws of eighteen hun-
7 dred and eighty-one, is hereby further amended so that
8 the same, when amended, shall read as follows :

·Section 1. A municipal court is hereby established in
10 and for the city of Auburn, to be denominated the muni-
11 cipal court of the city of Auburn, which shall be a court
12 of record and have a clerk and a seal, and consist of one
13 judge, appointed as provided in the constitution, and who
14 shall be *ex-officio* a justice of the peace and of the quorum,
15 and have and exercise concurrent authority and jurisdic-
16 tion with trial justices over all matters and things by law
17 within their jurisdiction, and such authority and jurisdic-
18 tion additional thereto as is conferred upon him by this
19 act, and who shall receive from said city an annual salary
20 of eight hundred dollars, to be paid to him in quarterly
21 payments.

Section 2. Said court shall have jurisdiction as follows :

I. Exclusive original jurisdiction of all offenses against
24 the ordinances or by-laws of said city, and all such other
25 criminal offenses and misdemeanors committed therein as
26 are cognizable by trial justices ; and concurrent jurisdic-
27 tion with trial justices in the county of Androscoggin of
28 all like offenses and misdemeanors not herein placed within
29 its exclusive jurisdiction, when committed in any town or
30 city in said county except Lewiston.

II. Exclusive original jurisdiction of all civil actions
32 wherein the debt or damages demanded do not exceed
33 twenty dollars, and both parties, or any plaintiff and a
34 person summoned as a trustee, reside in the city of
35 Auburn, including prosecutions for penalties in which
36 said city is interested and actions of forcible entry and

37 detainer arising therein ; and concurrent jurisdiction with
38 trial justices in said county of all other civil actions and
39 other civil proceedings cognizant by them, not within the
40 exclusive jurisdiction of said court or the municipal court
41 of the city of Lewiston ; *provided*, that any civil action,
42 in which the judge or clerk is interested, but which other-
43 wise would be within the exclusive jurisdiction of said
44 court, may be brought in and disposed of by the Lewis-
45 ton municipal court in the same manner and with like
46 effect as other actions therein.

III. Original jurisdiction concurrent with the supreme
48 judicial court of the offenses described in sections one,
49 six, seven and nine of chapter one hundred and twenty of
50 the Revised Statutes, when the alleged value of the prop-
51 erty exceeds twenty but does not exceed fifty dollars ; of
52 the offenses described in section twenty-eight of chapter
53 one hundred and eighteen of the Revised Statutes ; of the
54 offenses described in sections one and four of chapter one
55 hundred and twenty-six of the Revised Statutes, when the
56 alleged value of the property fraudulently obtained, mort-
57 gaged or sold, or fraudulently removed or concealed, does
58 not exceed fifty dollars ; and on conviction may punish
59 for either of said offenses by fine not exceeding fifty dol-
60 lars, and by imprisonment in the county jail not more
61 than four months ; and also of the offense described in
62 section six of chapter one hundred and twenty-four of the
63 Revised Statutes, and on conviction may punish therefor
64 by fine not exceeding fifty dollars and by imprisonment in
65 the county jail not more than thirty days and also of the
66 offenses described in section four of chapter one hundred
67 and forty-one of the Revised Statutes, and on conviction

68 may sentence therefor to imprisonment in the county jail
69 not more than sixty days ; and of the offenses described
70 in sections seventeen and twenty-two of chapter one hun-
71 dred and twenty-eight of the Revised Statutes, relating to
72 tramps, as amended by chapter two hundred and eighty-
73 eight of the Public Laws of eighteen hundred and eighty-
74 nine, and on conviction may punish therefor as therein
75 provided.

IV. Original jurisdiction concurrent with the supreme
77 judicial court and the municipal court of the city of Lew-
78 iston of all civil actions in which the debt or damages
79 demanded exceed twenty dollars but do not exceed three
80 hundred dollars and the defendant resides within the
81 county of Androscoggin; *provided, however*, that any
82 action wherein the debt or damage demanded exceeds
83 twenty dollars, brought in said court, shall be removed
84 by order of the judge into the supreme judicial court, on
85 motion of the defendant, filed at the return term, if he
86 files therewith, at the same time, an affidavit that he
87 believes he has a good defense to said action, in whole or
88 in part, and in good faith intends to make such defense,
89 and deposits with the clerk the fee of the clerk of the
90 court above for entering said action therein ; and when
91 such removal has been ordered, the clerk shall file in the
92 supreme judicial court, at its next term in the county, an
93 attested copy of the writ in such action, and of said
94 motion and affidavit, and order of court thereon, and pay
95 to the clerk of said court the fee for entering the same,
96 for which services he shall be entitled to the same fees
97 allowed for the necessary copies in actions carried up by
98 appeal, to be paid to him by the defendant, and recovered
99 by him with his costs, if he prevail in the suit.

Section 3. Nothing in the foregoing section shall be construed to give said court any authority exceeding that of trial justices to hear and determine any civil action in which the title to real estate, according to the pleadings or brief statement filed therein by either party, is in question, but all such actions brought therein shall be removed to the supreme judicial court in the county, or otherwise disposed of as provided in section four of chapter eighty-three of the Revised Statutes.

Section 4. The clerk of said court shall be a citizen of said Auburn and a member of the bar of the county of Androscoggin, and shall be appointed by the governor, by and with the advice and consent of the council, for a term of four years; and he shall be sworn and give bond to the county as required by law. In case of the absence of said clerk from court, or should a vacancy occur in the office of clerk, the judge may appoint a clerk *pro tem.*, who shall be sworn by said judge, and act during such absence or until such vacancy be filled.

Section 5. It shall be the duty of said clerk to attend the sessions of said court held for civil business and during all criminal proceedings before it, and keep a record of its doings; and he may administer oaths and affirmations, and shall have all such other powers and perform all such other duties, relative to proceedings in said court, in all matters, civil or criminal, within its jurisdiction, as clerks of the supreme judicial court have and perform relative to like proceedings in that court. He may receive criminal complaints and accusations in bastardy, and issue warrants thereon, to be returned before said court, and shall make and sign all subpoenas and all processes of

131 commitment issued thereby; but any such warrant or
132 other precept signed and issued by the judge shall be
133 equally valid. Should the judge of said court be absent,
134 or should a vacancy occur in the office of judge thereof,
135 said clerk, during such absence or vacancy, shall have all
136 the powers and discharge all the duties of said judge in
137 relation to the criminal business of said court.

Section 6. Said court shall have authority to administer
139 all necessary oaths or affirmations; to hear and determine
140 civil causes before it, and to render judgment therein and
141 issue execution upon the same, such execution, except
142 when otherwise provided by law, to have the same force
143 and be satisfied in the same manner as if issued by the
144 supreme judicial court; to compel the attendance of
145 witnesses, and punish persons duly summoned as wit-
146 nesses, if they refuse or neglect to attend; to make and
147 enforce such rules and regulations, not repugnant to
148 law, as may be necessary therein for the prompt admin-
149 istration of justice; and all the provisions of law relat-
150 ing to proceedings and practice in the supreme judicial
151 court, and to the attachment of real or personal estate,
152 the taxation of costs, the rendition of judgments and the
153 issuing, service, satisfaction and return of executions
154 shall be extended to and apply to said municipal court
155 and to proceedings therein, except so far as such appli-
156 cation may be modified by the provisions of this act.

Section 7. Writs in civil actions commenced in said
158 court shall be in the usual forms and all such writs and
159 all other precepts and processes, civil or criminal,
160 issued by said court, shall bear teste of the judge under
161 seal of said court, and be signed by the judge or by the

162 clerk, and be of equal validity when signed by either.
163 All such writs shall be made returnable at one of the
164 next two terms of said court held after seven days from
165 their date, and service thereof may be made at any time
166 not less than seven days before the return day thereof,
167 except that when any defendant or trustee named in any
168 such writ is a corporation, service upon such corporation
169 must be made at least thirty days before the return day.
170 In a prosecution in said court for an offense against any
171 ordinance of the city of Auburn, it shall not be necessary
172 to recite such ordinance in the complaint, or to set out
173 the offense more particularly than in a prosecution for
174 an offense against a public statute.

Section 8. Said court shall be held on the fourth Tues-
176 day of every month, except August, for the entry, trial
177 and determination of civil actions of all kinds that may
178 lawfully be brought before it, and for the transaction of
179 other civil business, and upon each other Tuesday of the
180 same months for the entry, trial and determination of
181 actions of forcible entry and detainer only, at ten o'clock
182 in the forenoon, at such suitable place within the city of
183 Auburn as said city shall provide. When held for civil
184 business, it may be adjourned from time to time by the
185 judge, but it shall be considered as at all times in session
186 for the cognizance of criminal actions.

Section 9. Should the judge be prevented by any
188 cause from attending at the time designated in the fore-
189 going section for holding a monthly or other civil term
190 of said court, the clerk shall enter all actions then return-
191 able, and all pleas, motions, disclosures, accounts in set-
192 off and other papers then filed, and adjourn the court to

193 a day certain, not beyond the third day thereafter. On
194 that day, if the judge is still absent, the clerk shall, by
195 public proclamation, adjourn the court without day; but
196 shall first record default and enter up judgment in all
197 actions of the term not answered to by the defendants,
198 except trustee actions, and in all trustee actions not
199 answered to by the defendants or by the trustees therein
200 named and summoned, and also, by consent of the parties,
201 in any continued action cognizable at such term, and
202 shall continue all other actions; *provided*, that all con-
203 tinuances of actions of forcible entry and detainer, in
204 said court, whether by the clerk, as above provided, or
205 by order of the judge when present, shall be only to
206 the next term, weekly or monthly, at which such actions
207 are cognizable. In case a vacancy should occur in the
208 office of the judge, any civil term of said court occurring
209 during such vacancy shall be adjourned by the clerk
210 from time to time, not more than three days at any one
211 time, without transacting any other business and without
212 detriment to any action or proceeding pending therein,
213 until such vacancy is filled.

Section 10. All actions in said court shall be entered
215 on the first day of the term at which they are made
216 returnable, and not afterwards, except by special per-
217 mission. When a defendant legally served fails to
218 appear during the first two days of the return term, he
219 may be defaulted and the charge in the declaration taken
220 to be true; but if he afterwards appear during the term
221 the court may permit the default to be taken off. Pleas
222 in abatement must be filed on or before the second day
223 of the term, and shall be heard and determined during
224 the term if either party so desire.

Section 11. In actions of forcible entry and detainer
226 brought in said court, the defendant's pleading in bar shall
227 be the general issue with a brief statement of any special
228 matters of defense, and must be filed within the first two
229 days of the return term or the defendant shall be de-
230 faulted, unless the court enlarge the time, for which it
231 may impose terms. In any other actions therein the
232 pleadings in bar may be the same as required in the
233 supreme judicial court, and must be filed on or before
234 the second day of the next monthly term after entry, or
235 the defendant shall be defaulted, unless the plaintiff con-
236 sents to an extension of the time or the court for good
237 cause, with or without terms at its discretion, allows
238 such extension. All actions of forcible entry and de-
239 tainer, and any other action in which either party shall
240 have given written notice to the adverse party ten days
241 before the return day that he desires a trial at the first
242 term, shall be in order for trial at the return term, and
243 so remain until tried or otherwise finally disposed of,
244 unless continued by consent, or on motion of either
245 party for good cause, in which latter case the court may
246 impose reasonable terms, but all other actions not de-
247 faulted or otherwise finally disposed of, shall be con-
248 tinued as of course, and be in order for trial at the next
249 term.

Section 12. Any party may appeal from a judgment
251 or sentence of said court to the supreme judicial court,
252 in the same manner and subject to the same conditions
2 as from a judgment or sentence of a trial justice.

Section 13. The costs and fees allowed to parties,
255 attorneys and witnesses in all civil actions in said court,

256 in which the debt or damages recovered does not exceed
257 twenty dollars including actions of forcible entry and
258 detainer, shall be the same allowed by trial justices in
259 like actions before them, except that the plaintiff, if he
260 prevail, shall be allowed two dollars for his writ, and
261 the defendant, if he prevail, two dollars for his plead-
262 ings, but in actions in which the amount recovered
263 exceeds twenty dollars, the costs and fees shall be the
264 same as allowed in the supreme judicial court in like
265 actions, except that the defendant if he prevail shall be
266 allowed two dollars for his pleadings, and that witnesses
267 shall be allowed one dollar per day, and travel as in other
268 cases.

Section 14. No fees shall be allowed or taxed for said
270 judge in any civil action or proceeding in said court ;
271 and none shall be taxed for him in any criminal action
272 or proceeding therein for any service the fee for which
273 is to be allowed the clerk, as provided in section fifteen,
274 but for any other services in criminal matters, the same
275 fees shall be allowed for him and at the same rates as
276 are allowed by law to trial justices for like services,
277 except that his fee for a complaint and warrant shall be
278 one dollar, and for the trial of a complaint or of a
279 libel of intoxicating liquors two dollars for the first
280 day and one dollar for every additional day engaged
281 therein, all of which fees shall inure to the city of
282 Auburn, and be paid to the treasurer of said city, whose
283 receipt shall be a sufficient voucher for such payment.

Section 15. The clerk of said court may tax and shall
285 be allowed for his services in a civil action the same fees,
286 the trial fee excepted, allowed by law to trial justices for

287 like services, and at the same rates, except that he shall
288 be entitled to sixty cents for entering and recording an
289 action, and twenty-five cents for taxing the costs, said
290 fees to be paid him by the party at whose instance the
291 services were performed, and taxed with the costs of
292 such party if he prevail in the suit. For his services in
293 criminal proceedings, he shall be entitled to forty cents
294 for taxing the costs and recording judgment, ten cents
295 for each subpœna, twenty-five cents for each mittimus
296 and each recognizance, fifty cents for making and record-
297 ing each libel of intoxicating liquors, and twenty-five
298 cents for each order to destroy or to restore such liquors,
299 said fees to be taxed in the bills of costs, and unless paid
300 into court, to be allowed by the county commissioners,
301 and paid by the county treasurer, as provided by law in
302 relation to other criminal expenses.

Section 16. The clerk shall receive all fines, forfeitures
304 and costs paid into court in criminal proceedings, and
305 may retain from such costs his own fees, but shall pay
306 over all other fees to the persons to whom they were
307 allowed, when called for, if called for within one year,
308 except the fees of the judge, which he shall account for
309 and pay over to the treasurer of the city of Auburn at
310 the end of every three months. All fines and forfeitures
311 received by him, and all fees so received but not season-
312 ably called for, he shall account for and pay over at the
313 time and in the manner required by law, but no account
314 required by this section shall be deemed sufficient unless
315 approved and signed by the judge.

Section 17. It shall be the duty of the city of Auburn
317 to provide a suitable court room, conveniently situated
318 and appropriately fitted up and furnished, in which to

319 hold said court, and keep the same in proper condition
 320 for use, and also to provide for said court an appropriate
 321 seal, and all blanks, blank books, dockets, stationery
 322 and other things necessary in the transaction of its busi-
 323 ness; and said city shall have authority to raise money
 324 for that purpose and for the payment of the salary of
 325 the judge.

Section 18. Trial justices are hereby restricted from
 327 exercising any jurisdiction in the city of Auburn over
 328 any matter or thing, civil or criminal, except such as are
 329 within the jurisdiction of justices of the peace and
 330 quorum, and except that they may issue warrants on
 331 complaints for criminal offences, to be returned before
 332 said municipal court.'

SECT. 2. This act shall take effect when approved so
 2 far as to authorize the appointment of a clerk of said court
 3 as provided therein, and shall be in full effect on and after
 4 the second Monday of March in the year eighteen hundred
 5 and ninety-one: *provided*, that nothing therein shall be
 6 held to restrict or enlarge the powers of the judge in relation
 7 to any proceeding pending in said court at the time when
 8 said act goes into effect, or in relation to any writ or other
 9 process then already issued and served.

SECT. 3. All acts and parts of acts inconsistent with
 2 this act are hereby repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
 February 21, 1891.

Tabled, pending first reading by Mr. SAVAGE of Auburn, and ordered
 printed.

W. S. COTTON, *Clerk*.