

# MAINE STATE LEGISLATURE

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# Sixty-Seventh Legislature.

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SENATE.

No. 72.

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## STATE OF MAINE.

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

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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, chapter fifty-one of the Private and Special Laws of eighteen hundred and eighty-one and chapter one hundred and fifty-two of the Private and Special Laws of eighteen hundred and ninety-one.

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*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 eighteen hundred and sev-  
3 enty-five, entitled "An Act to establish a municipal court  
4 in the city of Auburn," as amended by chapter one hun-  
5 dred and eighty-six of the Private and Special Laws of

6 the same year, chapter fifty-one of the Private and Special  
7 Laws of eighteen hundred and eighty-one and chapter one  
8 hundred and fifty-two of the Private and Special Laws of  
9 eighteen hundred and ninety-one, is hereby further  
10 amended so that the same, when amended, shall read as  
11 follows :

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

‘Section 2. Said court shall have jurisdiction as follows :’

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

II. Exclusive original jurisdiction of all civil actions  
35 wherein the debt or damages demanded do not exceed  
36 twenty dollars, and both parties, or any plaintiff, and a

37 person summoned as a trustee, reside in the city of  
38 Auburn, including prosecutions for penalties in which  
39 said city is interested, and actions of forcible entry and  
40 detainer arising therein ; and concurrent jurisdiction with  
41 trial justices in said county of all other civil actions and  
42 other civil proceedings cognizant by them, not within the  
43 exclusive jurisdiction of said court or of the municipal  
44 court of the city of Lewiston ; provided, that any civil  
45 action, in which the judge or clerk is interested, but  
46 which otherwise would be within the exclusive jurisdic-  
47 tion of said court, may be brought in and disposed of by  
48 the Lewiston municipal court in the same manner and  
49 with like effect as other actions therein.

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

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

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

99 entering the same, for which services he shall be entitled  
100 to the same fees allowed for the necessary copies in  
101 actions carried up by appeal, to be paid to him by the  
102 defendant and recovered by him with his costs, if he pre-  
103 vail in the suit.

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

‘Section 4. The clerk of said court shall be a citizen of  
114 said Auburn and a member of the bar of the county of  
115 Androscoggin, and shall be appointed by the governor,  
116 by and with the advice and consent of the council, for a  
117 term of four years; and he shall be sworn, and give bond  
118 to the county as required by law. In case of the absence  
119 of said clerk from court, or should a vacancy occur in  
120 the office of clerk, the judge may appoint a clerk, *pro*  
121 *tempore*, who shall be sworn by said judge, and act dur-  
122 ing such absence, or until such vacancy be filled.’

‘Section 5. It shall be the duty of said clerk to attend  
124 the sessions of said court held for civil business and dur-  
125 ing all criminal proceedings before it, and keep a record  
126 of its doings; and he may administer oaths and affirma-  
127 tions, and shall have all such other powers and perform  
128 all such other duties, relative to proceedings in said  
129 court, in all matters, civil or criminal, within its jurisdic-

130 tion, as clerks of the supreme judicial court have and  
131 perform relative to like proceedings in that court. He  
132 may receive criminal complaints and accusations in  
133 bastardy and issue warrants thereon, to be returned  
134 before said court and shall make and sign all subpoenas  
135 and all processes of commitment issued thereby, but any  
136 such warrant or other precept signed and issued by the  
137 judge shall be equally valid. Should the judge of said  
138 court be absent or should a vacancy occur in the office of  
139 judge thereof, said clerk, during such absence or vacancy,  
140 shall have all the powers and discharge all the duties of  
141 said judge in relation to the criminal business of said  
142 court.'

'Section 6. Said court shall have authority to admin-  
144 ister all necessary oaths or affirmations; to hear and  
145 determine civil causes before it, and to render judgment  
146 therein, and issue execution upon the same, such execu-  
147 tion, except when otherwise provided by law to have the  
148 same force and be satisfied in the same manner as if  
149 issued by the supreme judicial court; to compel the  
150 attendance of witnesses, and punish persons duly sum-  
151 moned as witnesses, if they refuse or neglect to attend;  
152 to make and enforce such rules and regulations not  
153 repugnant to law, as may be necessary therein for the  
154 prompt administration of justice; and all the provisions  
155 of law relating to proceedings and practice in the supreme  
156 judicial court, and to the attachment of real or personal  
157 estate, the taxation of costs, the rendition of judgments  
158 and the issuing, service, satisfaction and return of execu-  
159 tions shall be extended to and apply to said municipal  
160 court and to proceedings therein, except so far as such  
161 application may be modified by the provisions of this act.'

‘Section 7. Writs in civil actions commenced in said  
163 court shall be in the usual forms and all such writs and  
164 all other precepts and processes, civil or criminal, issued  
165 by said court, shall bear teste of the judge under seal of  
166 said court, and be signed by the judge or by the clerk,  
167 and be of equal validity when signed by either. All such  
168 writs shall be made returnable at one of the next two  
169 terms of said court held after seven days from their date,  
170 and service thereof may be made at any time not less  
171 than seven days before the return day thereof, except  
172 that when any defendant or trustee named in any such  
173 writ is a corporation, service upon such corporation must  
174 be made at least thirty days before the return day. In  
175 a prosecution in said court for an offense against any  
176 ordinance of the city of Auburn, it shall not be necessary  
177 to recite such ordinance in the complaint, or to set out  
178 the offense more particularly than in a prosecution for an  
179 offense against a public statute.

‘Section 8. Said court shall be held on the fourth Tues-  
181 day of every month for the entry, trial and determina-  
182 tion of civil actions of all kinds that may lawfully be  
183 brought before it, and for the transaction of other civil  
184 business, and upon each other Tuesday for the entry,  
185 trial and determination of actions of forcible entry and  
186 detainer only, at ten o’clock in the forenoon, at such  
187 suitable place within the city of Auburn as said city  
188 shall provide. When held for civil business it may be  
189 adjourned from time to time by the judge, but it shall be  
190 considered as at all times in session for the cognizance  
191 of criminal actions. The municipal officers of said city  
192 shall designate one of its police officers to be in attend-



193 ance on said court at its sessions for the purpose of pre-  
194 serving order and executing all legal orders and pro-  
195 cesses to him directed, by the court.'

'Section 9. Should the judge be prevented by any  
197 cause from attending at the time designated in the fore-  
198 going section for holding monthly or civil term of said  
199 court, the clerk shall enter all actions then returnable,  
200 and all pleas, motions, disclosures, accounts in set off  
201 and other papers then filed, and adjourn the court to a  
202 day certain, not beyond the third day thereafter. On  
203 that day, if the judge is still absent, the clerk shall, by  
204 public proclamation, adjourn the court without day; but  
205 shall first record default and enter up judgment in all  
206 actions of the term not answered to by the defendants,  
207 except trustee actions, and in all trustee actions not  
208 answered to by the defendants, or by the trustees therein  
209 named and summoned, and also, by consent of the  
210 parties in any continued action cognizable at such term,  
211 and shall continue all other actions; provided, that all  
212 continuances of actions of forcible entry and detainer,  
213 in said court whether by the clerk as above provided, or  
214 by order of the judge when present, shall be only to the  
215 next term, weekly or monthly, at which such actions are  
216 cognizable. In case a vacancy should occur in the office  
217 of the judge, any civil term of said court occurring dur-  
218 ing such vacancy, shall be adjourned by the clerk from  
219 time to time not more than three days at any one time,  
220 without transacting any other business and without detri-  
221 ment to any action or proceeding pending therein until  
222 such vacancy is filled.

‘Section 10. All actions in said court shall be entered  
224 on the first day of the term at which they are made  
225 returnable and not afterwards except by special permis-  
226 sion. When a defendant legally served fails to appear  
227 during the first two days of the return term, he may be  
228 defaulted and the charge in the declaration taken to be  
229 true; but if he afterwards appear during the term, the  
230 court may permit the default to be taken off. Pleas in  
231 abatement must be filed on or before the second day of  
232 the term.’

‘Section 11. In actions of forcible entry and detainer  
234 brought in said court, the defendant’s pleading in bar  
235 shall be the general issue with a brief statement of any  
236 special matters of defense, and must be filed within the  
237 first two days of the return term, or the defendant shall  
238 be defaulted, unless the court enlarge the time, for which  
239 it may impose terms. In any other actions therein the  
240 pleadings in bar may be the same as required in the  
241 supreme judicial court, and must be filed on or before  
242 the second day of the next monthly term after entry, or  
243 the defendant shall be defaulted, unless the plaintiff con-  
244 sents to an extension of the time or the court for good  
245 cause, with or without term at its discretion, allows such  
246 extension. All actions of forcible entry and detainer,  
247 and any other action in which either party shall have  
248 given written notice to the adverse party ten days before  
249 the return day that he desires a trial at the first term,  
250 shall be in order for trial at the return term, and so  
251 remain until tried or otherwise finally disposed of, unless  
252 continued by consent, or on motion of either party for  
253 good cause, in which latter case the court may impose

254 reasonable terms, but all other actions not defaulted or  
255 otherwise finally disposed of, shall be continued as of  
256 course, and be in order for trial at the next term.'

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

'Section 13. The costs and fees allowed to parties, attor-  
262 neys and witnesses in all civil actions in said court, in  
263 which the debt or damage demanded does not exceed  
264 twenty dollars including actions of forcible entry and  
265 detainer, shall be the same allowed by trial justices in  
266 like actions before them, except that the plaintiff, if he  
267 prevail, shall be allowed two dollars for his writ, and  
268 the defendant, if he prevail, two dollars for his pleadings,  
269 but in actions in which the debt or damage demanded  
270 exceeds twenty dollars, the costs and fees shall be the  
271 same as allowed in the supreme judicial court, in like  
272 actions, except that the defendant, if he prevail, shall be  
273 allowed two dollars for his pleadings, and that witnesses  
274 shall be allowed one dollar per day, and travel as in  
275 other cases.'

'Section 14. No fees shall be allowed or taxed for said  
277 judge in any civil action or proceeding in said court;  
278 and none shall be taxed for him in any criminal action  
279 or proceeding therein for any service, the fee for which  
280 is to be allowed the clerk as provided in section fifteen,  
281 but for any other services in criminal matters, the same  
282 fees shall be allowed for him and at the same rates as are  
283 allowed by law to trial justices for like services, except  
284 that his fee for a complaint and warrant shall be one dol-

285 lar, and for the trial of a complaint or of a libel of intoxi-  
286 cating liquors, two dollars for the first day and one dollar  
287 for every additional day engaged therein, all of which  
288 fees shall inure to the city of Auburn, and be paid to the  
289 treasurer of said city, whose receipt shall be a sufficient  
290 voucher for such payment.'

'Section 15. The clerk of said court may tax and shall  
292 be allowed for his services in a civil action the same fees,  
293 the trial fee excepted, allowed by law to trial justices,  
294 for like services and at the same rates, except that he  
295 shall be entitled to sixty cents for entering and record-  
296 ing an action, and twenty-five cents for taxing the costs,  
297 said fees to be paid him by the party at whose instance  
298 the services were performed, and taxed with the costs of  
299 such party if he prevail in the suit. For his services in  
300 criminal proceedings he shall be entitled to seventy-five  
301 cents for entering complaint, swearing witnesses, filing  
302 papers, and certifying costs to the county commissioners,  
303 forty cents for taxing the costs and recording judgment,  
304 ten cents for each subpoena, twenty-five cents for each  
305 mittimus and each recognizance, fifty cents for making  
306 and recording each libel of intoxicating liquors, and  
307 twenty-five cents for each order to destroy or to restore  
308 such liquors, said fees to be taxed in the bills of costs,  
309 and unless paid into court, to be allowed by the county  
310 commissioners, and paid by the county treasurer, as  
311 provided by law in relation to other criminal expenses.

'Section 16. The clerk shall receive all fines, forfeitures  
313 and costs paid into court in criminal proceedings, and  
314 may retain from such costs his own fees, but shall pay  
315 over all other fees to the persons to whom they were

316 allowed when called for, if called for within one year,  
317 except the fees of the judge, which he shall account for,  
318 and pay over to the treasurer of the city of Auburn, at  
319 the end of every three months. All fines and forfeitures  
320 received by him, and all fees so received but not seasona-  
321 bly called for, he shall account for and pay over at the  
322 time and in the manner required by law, but no account  
323 required by this section shall be deemed sufficient unless  
324 approved and signed by the judge.'

'Section 17. It shall be the duty of the city of Auburn  
326 to provide a suitable court room, conveniently situated  
327 and appropriately fitted up and furnished, in which to  
328 hold said court, and keep the same in proper condition  
329 for use, and also to provide for said court an appropriate  
330 seal, and all blanks, blank books, dockets, stationery  
331 and other things necessary in the transaction of its  
332 business; and said city shall have authority to raise  
333 money for that purpose and for the payment of the salary  
334 of the judge.'

'Section 18. Trial justices are hereby restricted from  
336 exercising any jurisdiction in the city of Auburn over  
337 any matter or thing, civil or criminal, except such as are  
338 within the jurisdiction of justices of the peace and quorum  
339 and except that they may issue warrants on complaints  
340 for criminal offenses, to be returned before said municipal  
341 court.'

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

SECT. 3. This act shall take effect when approved.

STATE OF MAINE.

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IN SENATE, February 8, 1895.

Reported by Mr. SPOFFORD, from Committee on the Judiciary, and  
laid on table to be printed under joint rules.

KENDALL M. DUNBAR, *Secretary.*