

MAINE STATE LEGISLATURE

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NEW DRAFT

EIGHTY-FIRST LEGISLATURE

HOUSE

NO. 43

House of Representatives, Feb. 2, 1923.

Reported by Mr. Hall from Committee on Legal Affairs and
ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-THREE

AN ACT to Establish the Kennebunk Municipal Court.

Be it enacted by the People of the State of Maine, as follows:

Section 1. A municipal court is hereby established in and
2 for the towns of Kennebunk, Kennebunkport, North Kenne-
3 bunkport, Wells and Lyman, in the county of York and
4 state of Maine, said towns constituting a municipal district,
5 to be denominated and styled "The Kennebunk Municipal
6 Court" which shall be a court of record and have a seal.
7 Said court shall consist of one judge who shall be, at the
8 time of his appointment, a duly qualified resident within the
9 said municipal district, and a member of the bar in York
10 county in good standing and shall reside, during his con-

11 tinuance in said office, within the limits of the said municipi-
12 pal district, and who shall be appointed, qualified and hold
13 his office as provided in the constitution. And he shall be
14 ex-officio, a justice of the peace for the state and have and
15 exercise a concurrent authority and jurisdiction with trial
16 justices over all matters and things by law within their
17 jurisdiction throughout the county of York, and such au-
18 thority and jurisdiction additional thereto as is hereinafter
19 conferred upon him by this act.

The governor, by and with the advice and consent of the
2 council, shall appoint a recorder of said court, who at the
3 time of his appointment shall be a member of the bar in
4 York county in good standing and a duly qualified resident
5 within the aforesaid municipal district. He shall keep the
6 records of said court when requested so to do by the judge,
7 and in case of the absence from the court room, or sickness
8 of the judge, or when the office of judge shall be vacant, the
9 recorder shall have and exercise all the powers of judge,
10 and perform all the duties required of the judge by this act,
11 and shall be empowered to sign and issue all processes and
12 papers and do all acts as fully and with the same effect as
13 the judge could do were he acting in the premises, and the
14 signature of the recorder as such shall be sufficient evidence
15 of his right to act instead of the judge without any recital
16 of the provisions of this act herein above authorizing him
17 to act. When the office of judge is vacant the recorder
18 shall be entitled to a salary at the same rate as the salary of

19 the judge during said vacancy only. He shall be ex-officio
20 a justice of the peace throughout the state, and hold his
21 office for four years.

If the judge or recorder should remove from said district
2 during his term in office he shall thereby vacate his office.

Sect. 2. Said court shall have additional jurisdiction as
2 follows:

(a) Exclusive jurisdiction of all such criminal offenses
2 and misdemeanors committed within the said municipal dis-
3 trict as are cognizable by trial justices.

(b) Concurrent jurisdiction with trial justices in the
2 county of York of all like offenses and misdemeanors, not
3 herein placed within its exclusive jurisdiction, when com-
4 mitted in said county outside the territory wherein some
5 other municipal court has exclusive jurisdiction.

(c) Original jurisdiction concurrent with the supreme
2 judicial court of all offenses committed in said municipal
3 district when the alleged value of the property exceeds ten
4 dollars, but does not exceed one hundred dollars.

(d) Of the offenses described in section twenty-six of
2 chapter one hundred and twenty of the revised statutes.

(e) Of offenses described in sections one, five and six
2 of chapter one hundred and twenty-eight of the revised
3 statutes when the alleged value of the property fraudulently
4 obtained, mortgaged or sold, or fraudulently removed or
5 concealed, does not exceed one hundred dollars, or where
6 the amount of which such owner or keeper of such garage

7 or other place where automobiles are stored for hire has
8 been defrauded does not exceed one hundred dollars.

And on conviction may punish for said offenses by a fine
2 not exceeding one hundred dollars and by imprisonment in
3 the county jail for not more than six months.

(f) Also of the offenses described in section seven of
2 chapter one hundred and twenty-six of the revised statutes,
3 and on conviction may punish therefor as provided by law.

(g) Of all offenses described in sections twenty-four and
2 twenty-nine of chapter one hundred and thirty of the re-
3 vised statutes relating to tramps, and may punish therefor
4 as provided by law.

(h) Exclusive original jurisdiction in all civil actions
2 wherein the debt or damage demanded does not exceed
3 twenty dollars, and both parties, or any defendant, or any
4 plaintiff provided any defendant in the same action resides
5 within said county of York and is not within the exclusive
6 jurisdiction of any other court, or any person summoned
7 as trustee, resides, or has his last and usual place of abode
8 in said municipal district, or any defendant, not a resident
9 of said York county, if he is found within and legal service
10 is made on him within said municipal district, provided any
11 plaintiff in said action resides in said municipal district; or
12 goods, estate, effects, or credits of any defendant are found
13 within said municipal district and attached on the original
14 writ, and services in this instance shall be made as provided
15 in section twenty-one of chapter eighty-six of the revised

16 statutes; including prosecutions for penalties in which either
17 of said towns are interested, and of actions for forcible
18 entry and detainer arising therein.

And shall also have exclusive jurisdiction over all offenses
2 committed against the ordinances and by-laws of the several
3 towns of said municipal district.

(i) Concurrent jurisdiction with trial justices in said
2 county of all other civil actions and other proceedings cog-
3 nizable by them, not within the exclusive jurisdiction of
4 this or some other court.

(j) Original jurisdiction concurrent with the supreme
2 judicial court in said county of York of all civil actions,
3 which are not within the exclusive jurisdiction of some
4 other municipal court of said county of York, in which the
5 debt or damages demanded exceeds twenty dollars, but does
6 not exceed three hundred dollars, and both parties, or any
7 defendant, or any plaintiff provided any defendant in the
8 same action resides within said county of York, or any
9 person summoned as trustee, resides, or has his last and
10 usual place of abode in said county of York, or any de-
11 fendant, not a resident of said county of York, if he is found
12 within and legal service is made on him within said county
13 of York, provided any plaintiff in said action resides in
14 said county of York; or goods, estate, effects or credits
15 of any defendant are found within said county of York and
16 attached on the original writ, and service in this last in-
17 stance shall be made as provided in section twenty-one of

18 chapter eighty-six of the revised statutes; provided also
19 that any action wherein the debt or damage demanded
20 exceeds twenty dollars shall, on motion of the defendant
21 filed at the return term, or by agreement of the parties in
22 writing at any subsequent term, be removed into the su-
23 preme judicial court, if the defendant, at the time of filing
24 said motions or agreements, pays into the court the fee of
25 the clerk of courts above for entering said action therein
26 and the fees of the court for the necessary copies which
27 shall be the same as for copies in cases carried up on appeal.
28 The judge shall then file in the supreme judicial court at
29 its next term in the county an attested copy of the writ in
30 such action and of such motion or written agreement, and
31 his order thereon for the removal of said action, and
32 shall pay the clerk of courts above his fee for entering said
33 action. The amount paid by the defendant shall be certified
34 to the court above and shall be taxed in his costs if he shall
35 prevail. In any case in which either of the towns of said
36 municipal district is a party, or is summoned as trustee,
37 this court shall not lose jurisdiction by reason of residence
38 or ownership of property in such towns by the judge, but in
39 such case the action may, upon written motion of either
40 party filed at the return term, be removed to the supreme
41 judicial court.

Any action civil or criminal in which the judge may be
2 interested or related to either of the parties by con-
3 sanguinity or affinity within the sixth degree according to

4 the rules of the civil law, or within the degree of second
5 cousin inclusive, but which would otherwise be within the
6 exclusive jurisdiction of the court, may be brought in and
7 disposed of in said court before said judge, if the parties
8 thereto, by agreement, waive the objection, or before the
9 recorder of said court, or in any other municipal court in
10 the county in the same manner and with like effect as other
11 actions brought therein.

Sect. 3. Nothing in the foregoing section shall be con-
2 strued to give said court any authority exceeding that of
3 trial justice to hear and determine any civil action in which
4 the title to real estate, according to the pleadings or brief
5 statement filed therein by either party, is in question, but
6 all such actions brought therein shall be removed to the
7 supreme judicial court in the county, or otherwise disposed
8 of as provided in section three of chapter eighty-eight of
9 the revised statutes.

Sect. 4. Said court shall have authority to administer all
2 necessary oaths or affirmations; to adopt an official seal; to
3 hear and determine civil causes before it, and to render
4 judgment therein and issue executions upon the same, such
5 executions, except when otherwise provided by law, to
6 have the same force and be satisfied in the same manner as
7 if issued by the supreme judicial court, to compel the
8 attendance of witnesses and punish persons duly summoned
9 as witnesses if they refuse or neglect to attend; to make and
10 enforce such rules and regulations not repugnant to law as

11 may be necessary therein for the prompt administration of
12 justice; and all the provisions of law relating to proceedings
13 and practice in the supreme judicial court, and to the attach-
14 ment of real and personal estate, the taxation of costs, the
15 rendition of judgments, and the issuing, service, satisfac-
16 tion and return of executions, shall be extended to and
17 apply to said municipal court and to proceedings therein
18 except so far as such application may be modified by the
19 provisions of this act.

Sect. 5. Writs in civil actions commenced in said court
2 shall be in the usual forms, and all such writs and all other
3 precepts and processes, civil and criminal, issued by said
4 court shall bear teste of the judge under the seal of said
5 court, and be signed by the judge or by the recorder and
6 be of equal force and validity when signed by either. All
7 such writs shall be made returnable at any one of the next
8 terms of said court held not later than sixty days after the
9 date of said writs, and service thereon may be made at any
10 time not less than seven days before the return day thereof,
11 except that when any defendant or trustee is a corporation,
12 service upon such corporation must be made at least four-
13 teen days before the return date.

Sect. 6. Said court shall be held on the first and third
2 Tuesdays of each month for the entry, trial and determina-
3 tion of civil actions of all kinds that may lawfully be brought
4 before it, and for the transaction of other civil business, at
5 nine of the clock in the forenoon, at such suitable place as

6 the judge may determine, until the town of Kennebunk
7 shall provide a court room, after which the court shall be
8 held therein, and all civil processes shall be made returnable
9 accordingly. Said court may be adjourned from time to
10 time by the judge at his discretion, but it shall be considered
11 in constant session for the cognizance of criminal actions.
12 Provided that if at any regular or adjourned term of said
13 court to be held for civil business neither the judge nor
14 recorder is present at the place used for holding said court
15 within two hours after the time for opening said court,
16 then it may be adjourned from day to day by any trial
17 justice, or justice of the peace, without detriment to any
18 action then returnable or pending, until the judge or re-
19 corder can attend, when said action may be entered or
20 disposed of with the same effect as if it were the first day
21 of the term; and it may be so adjourned without day when
22 necessary, in which event pending actions shall be con-
23 sidered as continued, and actions then returnable may be
24 returned and entered at the next term with the same effect
25 as if originally made returnable at said term. The trial
26 justice, or justice of the peace who continues said court as
27 aforesaid shall note on the docket thereof the fact that the
28 judge and recorder were absent and the time to which the
29 said court stands adjourned, and shall sign the same, and
30 need not keep any other record thereof.

Sect. 7. It shall be the duty of said judge of said court
2 to make and keep the records thereof, or cause the same to

3 be so made and kept, and to perform all other duties re-
4 quired of similar tribunals in this state, and copies of said
5 records duly certified by the said judge or recorder shall be
6 legal evidence in all courts.

Sect. 8. Any party may appeal from any judgment or
2 sentence of said court to the supreme judicial court in the
3 same manner as from a judgment or sentence of a trial
4 justice.

Sect. 9. Actions in said court shall be entered on the first
2 day of the term, and not afterward, save by permission of
3 the other party, or special permission of the judge. When
4 a defendant legally served, fails to enter his appearance, by
5 himself or his attorney on the first two days of the return
6 term, he may be defaulted, but if he afterward appear
7 during the term the court may for sufficient cause permit the
8 default to be taken off. But it cannot be taken off after
9 the first term without consent of the plaintiff, unless the
10 judge shall make a special order to that effect after notice
11 to and an opportunity for a hearing of the plaintiff.

Pleas and motions in abatement must be filed on the first
2 day of the term to which the action is returnable.

The defendant may file his pleadings in bar, which shall
2 be the general issue with a brief statement of special matters
3 of defense if he have any at any time after the writ is
4 entered, and must file them before he can ask that a day be
5 set for trial. If at any term the plaintiff files a motion
6 asking that the defendant be ordered to file his pleadings,

7 the judge shall order the defendant to file them accordingly,
8 and shall notify the defendant thereof in such a manner as
9 he deems proper. If the defendant in such case does not
10 file his pleadings on or before the first day of the next term
11 he shall be defaulted, unless the court for good cause enlarge
12 the time for which it may impose reasonable terms. Actions
13 of forcible entry and detainer seasonably answered to shall
14 be in order for trial at the return term, and shall remain so
15 until tried or otherwise disposed of finally, unless continued
16 by consent, or on motion of either party for good cause
17 shown, in which latter case the court may make such terms
18 as it deems reasonable.

Actions in which one party has given to the other five
2 days' written notice that a trial will be demanded at the
3 return term, on proving such notice, shall be in order for
4 trial at such term, but all other actions except actions of
5 forcible entry and detainer shall be continued as of course to
6 the next term.

Actions shall be assigned for trial as follows: At any
2 term either party may ask the court to assign the action for
3 trial at the next or some other term. The party asking the
4 earlier assignment shall have it granted. The court shall
5 assign the case for trial as asked, unless there is some good
6 reason for the contrary, and shall notify the other party of
7 the time set for trial as he deems proper.

Trials shall not be assigned for the first day of any term
2 save by consent of both parties. Any party may appear on

3 the first day of a term, and by motion show cause for a
4 continuance, which the judge may grant with or without
5 terms, as he deems right or may refuse.

To serve the best interests of the parties, trials may be
2 had at any time in or out of term time, and at any place
3 to be provided by the parties thereto within said judicial
4 district, by the consent of the parties thereto, or on motion
5 by either party hearing granted by the court, or by order
6 of the court.

Sect. 10. In actions of forcible entry and detainer brought
2 in said court, the defendant's pleading shall be a general
3 issue with a brief statement of any special matters of de-
4 fense, and must be filed upon the first day of the return
5 term, or the defendant shall be defaulted unless the court
6 enlarge the time, for which it may impose terms.

Sect. 11. The costs and fees allowed to parties, attorneys
2 and witnesses in all civil actions in said court in which the
3 debt or damage demanded does not exceed twenty dollars,
4 including actions of forcible entry and detainer, shall be the
5 same allowed by trial justices in actions before them, except
6 that the plaintiff, if he prevail, shall be allowed two dollars
7 for his writ, and the defendant, if he prevail, one dollar for
8 his pleadings, but in actions in which the debt or damage
9 exceeds twenty dollars the costs and fees shall be the same
10 as allowed in the supreme judicial court in like actions, ex-
11 cept that witnesses shall be allowed one dollar per day and
12 travel as in other cases. All the doings and proceedings of

13 this court, when not otherwise regulated by this act, and
14 not inconsistent herewith, shall be governed by the rules
15 and laws regulating supreme court procedure.

Sect. 12. The judge of said court may tax and shall be
2 allowed for his services in a civil action wherein the debt
3 or damage demanded does not exceed twenty dollars, the
4 same fees allowed by law to trial justices for like services
5 and at the same rates, and when the debt or damage de-
6 manded exceeds twenty dollars he may tax and shall be
7 allowed the same fees that the law allows to clerks of the
8 supreme judicial court for like services. All said fees are
9 to be paid him by the party at whose instance the services
10 were performed, and taxed with the costs of said party
11 if he prevail in the suit, and shall be accounted for and paid
12 over to the treasurer of York county.

For his services in criminal proceedings he shall be en-
2 titled to fifty cents for receiving complaint and issuing a
3 warrant; seventy-five cents for entering complaint, swear-
4 ing witnesses, filing papers, and certifying costs to the
5 county commissioners; forty cents for taxing the costs and
6 recording judgment; ten cents for each subpoena; twenty-
7 five cents for each mittimus and each recognizance; fifty
8 cents for making and recording each libel of intoxicating
9 liquors, twenty-five cents for each order to destroy or
10 restore such liquors; and two dollars for each day actually
11 employed in the trial of any issue, said fees being taxed in
12 the bill of costs.

Sect. 13. The judge shall receive all fines, for forfeitures
2 and costs paid into court in criminal proceedings, and shall
3 pay over all fees to the person to whom they are allowed
4 when called for, if called for within one year. All fines and
5 forfeitures received by him, and all fees so received, but not
6 seasonably called for, and all other fees and costs he shall
7 account for and pay over at the time and in the manner
8 required by law to the treasurer of York county, but no
9 account required by this section shall be deemed sufficient
10 unless certified by oath of the judge.

Section 14. The town of Kennebunk shall provide a
2 suitable court room in said Kennebunk, conveniently situ-
3 ated, appropriately fitted up and furnished, in which to hold
4 said court, and keep the same in proper condition for use,
5 and it shall be deemed and denominated the court room,
6 though used also for other purposes if approved by the
7 judge. The county of York shall provide for said court
8 an appropriate seal, and all blanks, blank books, dockets,
9 stationery, and other things necessary for the transaction
10 of its business; and said county of York is hereby author-
11 ized to appropriate money therefor.

Sect. 15. The judge shall receive a salary in full for all
2 services of six hundred dollars per annum to be paid him
3 by the county of York, and the recorder a salary of three
4 hundred dollars per annum, payable quarterly.

Sect. 16. Trial justices are hereby restricted from exer-
2 cising any civil or criminal jurisdiction in the towns of said

3 municipal district, except as they may issue warrants on
4 complaints for criminal offenses committed in said towns
5 to be returned before said municipal court, and excepting
6 also such jurisdiction as is reserved for them in section six
7 of this act. Such restrictions shall be suspended until the
8 judge of said court shall enter on the duties of his office.
9 Nothing in this act shall be construed to interfere with
10 actions or proceedings in said municipal district which have
11 been brought and are pending, before trial justices, or any
12 other municipal court, at the time when the judge of said
13 court shall enter upon the duties of his office, but all such
14 actions and proceedings shall be disposed of by such trial
15 justices or municipal courts in the same manner as if this
16 act had not been passed.