

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 282

H. P. 835

House of Representatives, Jan. 31, 1935.

Referred to Committee on Judiciary and 500 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Churchill of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

AN ACT to Establish the Brewer Municipal Court.

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

Sec. 1. Brewer Municipal Court established. The Brewer municipal court shall be a court of record and have and use a seal on all original processes, and consist of 1 judge and a clerk who shall, while in office, be a trial justice, and be appointed by the governor, by and with the advice of the council, and hold his office for the term of 4 years, and be both duly commissioned and qualified. Neither shall act as counsel or attorney in any cause cognizable by said court.

Sec. 2. Jurisdiction. Said court shall exercise jurisdiction over all such matters and things, civil and criminal, within the city of Brewer and the towns of Eddington, Holden and Orrington as trial justices, justices of the peace and justices of the peace and quorum may exercise, and under similar restrictions and limitations, and concurrent jurisdiction with trial justices in cases of forcible entry and detainer in said city and towns before mentioned, and exclusive jurisdiction in all such matters and things when either party interested, or a person summoned as trustee resides in the city of Brewer or the towns of Eddington, Holden or Orrington; and over all offenses committed against the ordinances or by-laws of the city of Brewer, though the penalty therefor may accrue to said city; and in the

prosecution of any such ordinances or by-laws, or any special law of the state relating to said city, such by-law, ordinance or special law need not be recited in the complaint or process, nor the allegations therein be more particular than in a prosecution on a public statute; and over all such criminal offenses committed within the limits of the same as now cognizable by trial justices; and no trial justice,—except the clerk of said court,—or justice of the peace shall take cognizance over any crime or offense committed in said city or towns, or any civil action over which said court has exclusive jurisdiction. Said court shall have concurrent jurisdiction with the supreme judicial court in all personal actions where the debt or damage demanded, exclusive of costs, is over \$20, and not over \$300 and in all actions of replevin under chapter 96 of the revised statutes, when the sum demanded for the penalty, forfeiture or damages, or the value of the goods or chattels replevied does not exceed \$300; but the jurisdiction shall not include proceedings under the divorce laws or complaints under the mill act, so-called, nor jurisdiction over actions in which the title to real estate according to the pleadings filed in the case by either party is in question except as provided in sections 6 and 7, chapter 94 of the revised statutes.

Sec. 3. Concurrent jurisdictions. Said court shall have concurrent jurisdiction with the supreme judicial court in the county of Penobscot of all offenses not required by the constitution or any statutes to be answered for on a presentment or indictment or indictment of a grand jury and may punish for such offenses by a fine of not more than \$100, and by imprisonment for less than 1 year; and of all offenses over which said jurisdiction is or may be granted, not herein specified.

Sec. 4. Removal of cases. If any defendant in any action in said court where the amount claimed in the writ exceeds \$20, or his agent or his attorney shall on the return term of the writ file in said a motion asking that said case be removed to the supreme judicial court and deposit with the clerk the sum of \$2 for copies and entry for said supreme court, to be taxed in his costs if he prevails, the said action shall be removed into the supreme judicial court for said county, and the clerk shall forthwith cause certified copies of the writ, officers return and defendant's motion to be filed in the clerk's office of said supreme court, and shall pay the entry fee thereof; and the said action shall be entered on the docket of the term next preceding the said filing, unless said court shall then be in session, when it shall be entered forthwith, and shall be in order for trial at the next succeeding term. If no such motion is filed, the said munic-

ipal court shall proceed and determine said action, subject to the right of appeal in either party as now provided by law. The pleadings in such case shall be the same as in the supreme judicial court.

Sec. 5. Taxing of costs. If any action in which the plaintiff recovers for the penalty, forfeiture, debt or damage not over \$20, or property, the value of which does not exceed that sum, the costs shall be taxed as before trial justices, except that the plaintiff shall have \$2 for his writ. Where the defendant prevails in any action in which the action claimed in the writ is not over \$20, or property, the value of which does not exceed that sum, he shall recover \$2 for his pleadings and other costs as before trial justices. In actions where the amount recovered by the plaintiff exclusive of costs, exceeds \$20, or property, the value of which exceeds that sum or the amount claimed, or the value of the property recovered exceed \$20 where the defendant prevails, the costs of the parties, trustees and witnesses shall be the same as in the supreme judicial court, except the costs to be taxed for attendance shall be \$2.50 for each term, for as many terms as may be allowed by the court.

Sec. 6. Appeal. Any person aggrieved at any judgment or sentence of said court may appeal to the supreme judicial court in the same manner as from a judgment or sentence of a trial justice, and all such appeals shall be in order for trial at the first term of said appellate court after such appeal is taken. Final judgments in said municipal court may be re-examined in the supreme judicial court on a writ of error or on a petition for review, and when the judgment is reversed, the supreme judicial court shall render such judgment as said municipal court should have rendered, and when a review is granted it shall be tried in said supreme judicial court, questions of law, upon exceptions to the ruling of the court of record on agreed statement of facts, or on facts found by the court, shall be certified by the clerk to the chief justice of the supreme judicial court, with arguments of counsel, if such have been delivered to him, within 60 days after such exceptions have been allowed by the court. The party raising such questions shall deliver a copy of his arguments to the opposing counsel within 30 days thereafter, who shall within 20 days after receiving the same reply thereto and deliver the same to counsel for the moving party who shall in turn make reply thereto within 10 days thereafter, and deliver said arguments to the clerk to be delivered with the exceptions to the chief justice as aforesaid. And such questions of law shall be considered and decided by the law court as soon as may be; or, if the parties so agree of record, such question shall be certified to the next law for the

eastern district to be entered on the docket thereof and argued and determined according to the practice in said court, the result in either case to be certified by the clerk of said law court to this court; costs to be taxed to the prevailing party.

Sec. 7. Statutes to be applicable. All the provisions of the statutes of this state, relative to the attachment of real and personal property and the levy of real and personal property and the levy of executions, shall be applicable to actions in this court, and executions on judgments rendered therein; provided, that property may be attached, equal in value to double the ad damnum. Actions may be referred, and judgment on the referee's report may be rendered in the same manner and with the same effect as in the supreme judicial court, except that the referee's fees shall not be paid by the county, but taxed as costs.

Sec. 8. Further powers of court. Said court is hereby authorized to administer oaths, render judgments, issue executions, certify copies of its records, punish for contempt and compel attendance as in the supreme judicial court, and to make all such rules and regulations, not repugnant to law, as may be necessary and proper for the administration of justice and to facilitate its business.

Sec. 9. Fees. The price of blank writs and summonses with the seal of the court signed by the clerk, shall be 4 cents, and all other fees in civil cases shall be the same as are taxable by a trial justice, except as otherwise provided in sections 4 and 5. All writs and processes in civil matters shall be in the name of the state, bear the test of said judge, under seal of said court and signed by the court and signed by the clerk, be served in time and manner as now provided by law in case of writs issued by trial justices and made returnable at one of the 5 terms next begun and held after the commencement of the action, and be obeyed and executed throughout the state.

Sec. 10. Terms. Said court may adjourn from time to time but shall be considered in constant session for the trial of criminal offenses; and for the transaction of civil business shall be held on the 1st Monday of each month at 10 o'clock in the forenoon, except the month of August, provided, however, that said court shall be held on every Monday of each month, except the month of August, for the entry and trial of actions of forcible entry and detainer, and judgment in such actions may be entered on the day when the same are defaulted, or heard and determined; and

whenever the judge is absent, or temporarily unable to attend at any term of said court, the clerk may enter new actions returnable to that term, receive and file pleas, motions and other papers cognizable by said court, and enter up judgment in all defaulted actions, and may, then, by proclamation, adjourn the court to a day certain, or to the next term; provided, however, that said court shall not, during the month of August be open for the trial of any civil action. In case of the more permanent disability of the judge or his being interested, in any suit or in the case of his continued absence or a vacancy in his office, the clerk shall notify any justice of the supreme judicial court, who shall designate a trial justice in said county, who upon being duly sworn may hold court during the continuance of such vacancy or absence, or until such disability is removed, or try any suit in which said judge may be interested.

Sec. 11. Expenses of the court. Said court shall be held at such place as the city of Brewer shall provide and said city shall have power and it shall be its duty to raise money to provide a proper place for said court and its officers and suitably furnish, warm and light the same for which an adequate rental shall be paid. The salaries of the judge and clerk thereof, which are hereby fixed at \$1500 and \$500 respectively, to be paid quarterly which with all other expenses of said court, shall be paid from the treasury of the county of Penobscot.

Sec. 12. Duty of city marshal. The city marshal or one of his deputies shall be in attendance on said court when requested to do so by the judge, for the purpose of preserving order, and shall execute all legal orders and processes to him directed by the court.

Sec. 13. Records. The records of said court shall be deposited with and kept by the clerk; and said municipal court shall have jurisdiction thereof and full power and authority to issue and renew executions and other processes and carry into effect the judgments and decrees rendered, and shall for reasonable fees grant and certify copies of the records of the court when required, which shall be evidence of the contents of such records in any legal proceedings.

Sec. 14. Clerk of the court. The clerk of said court shall give a bond to the county of Penobscot in the sum of \$200 to be approved by the county commissioners of said county. In case of the absence of said clerk, or a vacancy in said office, the judge may appoint a clerk, who shall be sworn by said judge and act during said absence, or till the vacancy is filled.

Sec. 15. Clerk's substitute. If the judge and clerk are both necessarily absent the judge may designate some trial justice in said county to perform the duties of clerk; and if said judge should not designate a trial justice, the clerk may designate one.

Sec. 16. Duties of clerk. Said clerk shall record the doings of said court, may administer oaths, and have such powers and perform such duties as are possessed and performed by the clerks of the supreme judicial court; and shall have the power to hear complaints in all criminal matters, accusations in bastardy, draw all complaints and sign all warrants, and make and sign all processes of commitment, but the same shall be heard and determined as now provided by law; but such complaints, accusations, warrants or processes of commitment, drawn and signed by the judge of said court shall be equally valid. Whenever said judge shall be engaged in the transaction of civil business, or be absent from the court room or the office shall be vacant, said clerk shall have and exercise the same powers and perform the same duties which said judge possesses and is authorized to perform in the transaction of criminal business. All processes issued by said clerk in criminal matters shall bear the seal of said court and be signed by said clerk and have the same authority as if issued and signed by said judge.

Sec. 17. Disposal of monies. All fines, penalties and costs paid into said court upon convictions and sentences in criminal matters, together with all fees allowed by law in the transaction of criminal and civil business, shall be paid to said clerk; provided, that there shall be allowed for every warrant issued \$1, and for the trial of an issue in criminal cases, \$2, and all other fees in criminal cases shall be the same as are taxable by trial justices.

Sec. 18. Further disposal of fines etc. All fines and forfeitures and fees of the judge and clerk of said court imposed and collected by said court in all criminal cases and all fees of said judge and clerk of said court in civil and criminal cases received by said clerk shall be accounted for and paid over quarterly into the treasury of said county for the use of said county; and all fees of said court paid after any commitment to any jailer shall be paid by him monthly into said treasury.

Sec. 19. Trial justices. The several trial justices and justices of the peace in the city of Brewer and the several towns over which the court jurisdiction shall continue to have and exercise all the power and author-

ity vested in them by the laws of the United States; but no such justices shall, except in proceedings in bastardy, exercise any civil or criminal jurisdictions under a penalty of \$20 for each offense, to be recovered by indictment. But nothing in this act shall be construed to prevent such justices from doing any business other than that especially devolving upon said court.