

# MAINE STATE LEGISLATURE

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# NINETY - THIRD LEGISLATURE

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**Legislative Document**

**No. 483**

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H. P. 839

House of Representatives, February 5, 1947.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. House of Lincoln.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-SEVEN

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### **AN ACT to Establish the Town of Lincoln Municipal Court.**

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

**Sec. 1. Town of Lincoln municipal court established.** A municipal court is hereby established in and for the towns of Lincoln, Enfield, Passadumkeag, Burlington, Lowell, Lee, Springfield, Winn, Mattawamkeag, Woodville and Chester, and the plantations of Grand Falls, Carroll and Lakeville, in the county of Penobscot, to be denominated and known as the "Town of Lincoln Municipal Court," which court shall be a court of record and have a seal.

**Sec. 2. Judge and recorder; appointment, salary, etc.** Said court shall consist of 1 judge who shall reside during his continuance in office in the town of Lincoln. He shall be an attorney at law in good standing, or a trial justice who shall have been in active practice for at least 7 years. He shall be appointed, qualified and hold his office as provided in the constitution and shall be ex officio a justice of the peace for the state, and have and exercise a concurrent authority and jurisdiction throughout the county of Penobscot, and such authority and jurisdiction additional thereto as is hereinafter conferred upon him by this act.

The governor, with the advice and consent of the council, may appoint a recorder of said court, who at the time of his appointment shall be a resident of the town of Lincoln, duly qualified, who shall keep the records of said court when requested to do so by the judge; and in case of absence from the court room, or sickness of the judge, or when the office of judge shall be vacant, the recorder shall have and exercise all the powers of the judge and perform all the duties required of the judge by this act. He shall be empowered to sign and issue all processes and papers and do all acts as fully and with the same effect as the judge could do were he acting in the premises; and the signature of the recorder as such shall be sufficient evidence of his right to act instead of the judge, without any recital of the provision of this act hereinbefore authorizing him to act. When the office of the judge is vacant, the recorder shall be entitled to a salary at the same rate as the judge's salary during said vacancy only. He shall be ex officio a justice of the peace throughout the state.

If the judge and recorder are both necessarily absent, the judge may designate some trial justice in said county to perform the duties of the recorder; and if said judge shall not so designate a trial justice, the recorder may designate one. Said trial justice shall have authority to exercise all the powers of the recorder as given in this act.

Both judge and recorder shall hold their offices for 4 years, and until their successors are duly appointed and qualified. The judge shall receive a salary in full for all services of \$        per year and the recorder shall receive a salary of \$        per year, each such salary to be paid by the county of Penobscot in quarterly installments.

**Sec. 3. Jurisdiction, civil and criminal.** This court shall have jurisdiction over all other matters, civil and criminal, in the county of Penobscot in accordance with the provisions of law which govern municipal courts in this state.

**Sec. 4. Powers and duties in civil actions.** Said court shall have authority to administer all necessary oaths or affirmations; to adopt an official seal; to hear and determine civil causes before it, and to render judgment therein and issue executions upon the same, such executions except when otherwise provided by law to have the same force and be satisfied in the same manner as if issued by the superior court of Penobscot county; to compel attendance of witnesses and punish persons duly summoned as witnesses if they refuse or neglect to attend; to make and enforce such rules and regulations not repugnant to law as may be necessary therein for the prompt administration of justice; and all the provisions of law relating to

proceeding and practice in the superior court of Penobscot county, and to the attachment of real and personal estate, the taxation of costs, the rendition of judgments and issuing, service, satisfaction and return of executions, shall be extended to and apply to said municipal court and to proceedings therein except so far as such application may be modified by the provisions of this act.

**Sec. 5. Forms of writs, when returnable.** Writs in civil actions commenced in said court shall be in the usual forms, and all such writs and all other precepts and processes, civil and criminal, issued by said court shall bear teste of the judge under seal of said court, and be signed by the judge or by the recorder and be of equal force and validity when signed by either. All such writs shall be made returnable at any one of the next 3 terms of said court held after either date, and service thereon may be made at any time not less than 7 days before the return day thereof, except that when any defendant or trustee is a corporation, service upon such corporation must be made at least 30 days before the return date.

**Sec. 6. Concurrent jurisdiction with superior court in civil actions.** Said court shall have concurrent jurisdiction with the superior court of Penobscot county 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 112 of the revised statutes of 1944, when the sum demanded for the penalty, forfeiture or damages, or the value of the goods or chattels replevied does not exceed \$300; in which any person summoned as trustee resides within said municipal district, or if a corporation, has an established place of business in said district; or, in which any action not commenced by trustee process, any defendant resides in said district, or if no defendant resides within the limits of this state, any defendant is served with process in said district, or the goods, estates or effects of any defendant are found within said district and are attached on the original writ; but this 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. In any case in which either of the towns of said municipal district is a party, or is summoned as trustee, this court shall not lose jurisdiction by reason of residence or ownership of property in such towns by the judge, but in such case the action may, upon written motion of either party filed at the return term be removed to the superior court.

**Sec. 7. Appeals.** Any party may appeal from any judgment or sentence of said court to the superior court of Penobscot county in the same

manner as from a judgment or sentence of a trial justice. If any defendant, his agent or attorney, in any action in said court in which the debt or damages claimed in the writ exceeds \$20, shall appear at the first term and on or before the 1st day of the second term, file in said court an affidavit that he has a good defense to said action and intends in good faith to make such defense and claims a jury trial, the said action shall be removed into and entered at the next term of the superior court for said county. And the judge of said municipal court on payment to him of the entry fee in said superior court by the plaintiff, shall forthwith cause the original writ and all other papers in the case to be filed in the clerk's office of said superior court. Actions pending in this court may be referred to one referee in the same manner as in said superior court, whose fees and necessary expenses shall be paid by the county on presentation of proper certificate of this court fixing the amount, and on report of the referee to this court, judgment may be rendered in the same manner and with like effect as in said superior court. Exceptions may be alleged and cases certified on an agreed statement of facts, or upon evidence reported by the judge, in all civil actions, as in the superior court of Penobscot county and the same shall be entered, heard and determined at a law term of the supreme judicial court, as if the same had originated in the superior court for the county of Penobscot; and decisions of the law court in such cases shall be certified to the judge of said municipal court for final disposition, with the same effect as in cases originating in said superior court.

**Sec. 8. Costs and fees to parties, etc., in civil actions.** The costs and fees allowed to parties, attorneys and witnesses in all civil actions in said court in which the debt or damage recovered does not exceed \$20, including actions of forcible entry and detainer, shall be the same allowed by trial justices in actions before them, except that the plaintiff, if he prevail shall be allowed \$2 for his writ and the defendant, if he prevail, \$1 for his pleadings but in actions in which the debt or damage recovered exceeds \$20 the costs and fees shall be the same as allowed in the superior court in like actions, except that witnesses shall be allowed \$1 per day and travel as in other cases.

**Sec. 9. Procedure in civil actions.** Actions in said court shall be entered on the 1st day of the term, and not afterwards, save by the permission of the other party, or special permission of the judge. When a defendant legally served, fails to enter his appearance, by himself or his attorney during the 1st day of the return term, he shall be defaulted; but the judge may in his discretion, on motion of either party, strike off said default within 24 hours thereafter, upon such terms as he deems reasonable;

and execution may issue after 24 hours from the time of said default and shall be made returnable in 3 months from the day when it issued. Pleas and motions in abatement must be filed on the 1st day of the term to which the action is returnable. The defendant may file his pleadings in bar, which shall be the general issue with a brief statement of special matters of defense if he have any at any time after the writ is entered, and must file them before he can ask that a day be set for trial. If at any term the plaintiff files a motion asking that the defendant be ordered to file his pleadings, the judge shall order the defendant to file them accordingly, and shall notify the defendant thereof in such manner as he deems proper. If the defendant in such cases does not file his pleadings on or before the 1st day of the next term he shall be defaulted, unless the court for good cause enlarges the time for which it may impose reasonable terms. Actions of forcible entry and detainer seasonably answered to shall be in order for trial at the return day, and shall remain so until tried or otherwise disposed of finally, unless continued by consent, or on motion of either party for good cause shown, in which latter case the court may impose such terms as it deems reasonable. Actions in which one party has given to the other 5 days' written notice that a trial will be demanded at the return term, on proving such notice, shall be in order for trial at such term, but all other actions except actions of forcible entry and detainer shall be continued as of course to the next term. Actions shall be assigned for trial as follows: During term time at any term either party may ask the court to assign the action for trial during term time at the next or some other term. The party asking the earlier assignment shall have it granted. The court shall assign the case for trial as asked, unless there is some good reason for the contrary, and shall notify the other party of the time set for trial in such manner as he deems proper. Trials shall not be assigned for the 1st day of any term save by consent of both parties. Any party may appear on the 1st day of a term, and by motion show cause for continuance, which the judge may grant or refuse with or without terms. To serve the best interests of the parties, trials may be had at any time in or out of term time, and at any place to be provided by the parties thereto within said district, by consent of the parties thereto, or on motion by either party and hearing granted by the court, or by order of the court.

**Sec. 10. Forcible entry and detainer, procedure.** In actions of forcible entry and detainer brought in said court, the defendant's pleadings shall be general issue with a brief statement of any special matters of defense, and must be filed upon the 1st day of the return term, or the defendant shall be defaulted unless the court enlarge the time, for which it may impose terms.

**Sec. 11. Fees of judge.** The judge of said court shall tax and shall be allowed for his services in a civil action wherein the debt or damages demanded does not exceed \$20, the same fees allowed by law to trial justices for like services and at the same rates and when the debt or damage demanded exceeds \$20 he may tax and shall be allowed the same fees that the law allows to clerks of the superior courts for like services; except that he shall receive for each blank writ by him signed 4c, and for the entry of each civil action 50c. All said fees are to be paid him by the party at whose instance the services are performed, and taxed with the costs of said party if he prevail in the suit, and shall be accounted for and paid over to the treasurer of Penobscot county. For his services in criminal proceedings he shall be entitled to the same fees allowed by law to trial justices for like services.

**Sec. 12. Judge to account for fees, penalties, etc.** The judge shall receive all fines, forfeitures and costs paid into court in criminal proceedings, and shall pay over all fees to the persons to whom they are allowed when called for, if called for within 1 year. All fines and forfeitures received by him, and all fees so received, but not seasonably called for, and all other fees and costs he shall account for and pay over at the time and in the manner required by law to the treasurer of Penobscot county, but no account required by this section shall be deemed sufficient unless verified by oath of the judge.

**Sec. 13. Terms of court.** Said court shall be held on the 1st Monday of each month for the entry, trial and determination of civil actions of all kinds that may lawfully be brought before it, and for the transaction of other civil business, and upon each other Monday for the entry, trial and determination of actions of forcible entry and detainer only, at 10 o'clock in the forenoon, at such suitable place as the judge may determine, until the town of Lincoln shall vote to provide a court room, after which the court shall be held therein, and all civil processes shall be made returnable accordingly. Said court may be adjourned from time to time by the judge at his discretion, but it shall be considered in constant session for the cognizance of criminal actions. If at any regular or adjourned term of said court to be held for civil business, neither the judge nor the recorder is present at the place used for holding said court within 2 hours after the time for opening said court, it may be adjourned from day to day by any justice of the peace, without detriment to any action then returnable or pending, until the judge or recorder can attend, when said action may be entered or disposed of with the same effect as if it were the 1st day of the term; and it may be so adjourned without day when necessary, in which

event pending actions shall be considered as continued, and actions then returnable may be returned and entered at the next term with the same effect as if originally made returnable at said term. The justice of the peace who continues said court as aforesaid shall note on the docket thereof the fact that the judge and recorder were absent and the time to which said court stands adjourned, and shall sign the same, and need not keep any other record thereof.

**Sec. 14. Records; certification thereof by judge or recorder legal evidence.** It shall be the duty of the judge of said court to make and keep the records thereof, or cause the same to be so made and kept, and to perform all other duties required of similar tribunals in this state, and copies of said records, duly certified by said judge or recorder, shall be legal evidence in all courts.

**Sec. 15. Town of Lincoln to provide suitable court room, seal, blanks, stationery and supplies for said court.** The town of Lincoln may, if it shall so vote at any regularly held town meeting, provide a suitable court room in said Lincoln, conveniently situated and appropriately fitted up and furnished, in which to hold said court, and keep the same in proper condition for use, and it shall be deemed and denominated the court room, though used also for other purposes if approved by the judge. Said town of Lincoln shall provide for said court an appropriate seal and all blanks, blank books, dockets, stationery and other things necessary for the transaction of its business; and said town is hereby authorized to appropriate money therefor.

**Sec. 16. Trial justices; jurisdiction limited.** Trial justices, in the places mentioned in section 1 of this act, are hereby prohibited from exercising any jurisdiction in said towns over any matters, civil or criminal, except such as are within the jurisdiction of justices of the peace, provided that until such judge of said court shall enter upon the duties of his office, any trial justice shall have and exercise the same jurisdiction as though this said municipal court had never been established; and all actions entered and pending before any trial justice at the time said judge of said court enters upon the duties of his office as aforesaid shall finally be disposed of by said trial justices; and nothing in this act shall be construed to interfere with such actions returnable before a trial justice as shall be commenced before this act takes effect.

**Sec. 17. Territorial jurisdiction of other municipal courts of county not affected.** Nothing in this act shall be construed to limit or affect the territorial jurisdiction, in civil or criminal matters, of the other municipal



courts in the county of Penobscot, as is established by their respective acts; but the jurisdiction of said Town of Lincoln Municipal Court over any portion of the county of Penobscot now within the territorial jurisdiction of other municipal courts within said county shall be concurrent with said other municipal courts.