

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

LEGISLATURE,

AT ITS SESSION, HELD IN JANUARY, 1822.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

PORTLAND :

THAYER, TAPPAN & STICKNEY, PRINTERS TO THE STATE.

1822.

point. And the Clerk of said Association shall keep an exact record of all the proceedings thereof, and the said Treasurer shall keep an exact account of all monies, donations and bequests, belonging to said Association, which account he shall be holden annually to settle, under oath, with the Association, in such manner as they shall prescribe; and the Librarian as well as the Treasurer and Clerk, shall be answerable in an action of the case, for all malfeasance or misfeasance, in their respective offices, to the Association aforesaid, by the name of the "Law Library Association," for the County in which it is formed. And the Treasurer of each Law Library Association, shall annually, in the month of January, and before the second Wednesday in said month, file in the Office of the Treasurer of State, a statement of the funds of said Association, and the amount of monies received within one year next preceding the time of making such statement.

Duty of the Clerk, Treasurer and Librarian

—answerable in an action of the case.

Statement of the Funds to be made annually.

[This Act passed February 2, 1822.]

CHAPTER CXCIH.

AN ACT to establish a Court of Common Pleas,

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That there be, and hereby is established, a Court of Common Pleas, which Court shall be holden by any one or more of the Justices thereof, and shall have original and exclusive jurisdiction of all civil actions arising within the counties in this State respectively, excepting such actions wherein the Supreme Judicial Court, or Justices of the Peace now have original jurisdiction, and excepting also, all actions of replevin, trespass *quare clausum fregit*, and of ejectment, or real actions; and shall have original and concurrent jurisdiction with the Supreme Judicial Court of all actions of replevin, trespass *quare clausum fregit*, and of ejectment, or real actions; and shall also have jurisdiction

Court established.

Jurisdiction, &c.

of all such offences, crimes and misdemeanors, as before the passing of this Act were cognizable by the respective Circuit Courts of Common Pleas, and shall also have appellate jurisdiction of all civil actions, and of all crimes and offences where an appeal may now, by law, be made to the Circuit Courts of Common Pleas, from the judgment or sentence of any Justice of the Peace. And said Court of Common Pleas is hereby fully authorized to give judgment, award execution, administer all necessary oaths and affirmations, and to do, execute, perform and order, whatever by the Constitution and Laws, it shall be their duty to do, or whatever the said Circuit Courts, before the passing of this Act, were authorized to do, execute or perform.

SECT. 2. *Be it further enacted,* That there shall be appointed and commissioned in manner provided by the Constitution, three persons to be Justices of the Court of Common Pleas, who shall be men of sobriety of manners, and learned in the law, one of whom shall be appointed and commissioned Chief Justice of said Court, and either of said Justices, so appointed and commissioned, shall have power to hold the Courts of Common Pleas, within any county in this State, at the times and places hereinafter mentioned. And whenever it shall so happen that no Justice of said Court shall attend at the time and place, at which said Court, by law, or by previous adjournment, ought to have been held, the Sheriff of the county, or in his absence the Clerk of the Court may adjourn the said Court from day to day, until a Justice shall attend, and shall post public notification thereof in writing, on the door of the court house. And, except in cases of inevitable failure, the said Court shall be opened at ten of the clock in the forenoon, on the first day of the term, and proceed on the business before it; and all parties by themselves or counsel shall at their peril, attend in readiness therefor. Jury trials shall have precedence of other matters, and be heard in succession, without delay; and if any action shall be continued from term to term, by consent of parties, no cost for travel or attendance, except in a cause submitted to referees or

Three Justices to be appointed; one of whom Chief Justice; either of whom may hold the Court.

In case no Justice shall attend the Sheriff or Clerk to adjourn the Court.

Court to be opened at 10 o'clock.

auditors, shall be allowed to either party, during the pendency of the action in said Court, after the day of the first call thereof. And in all actions referred, or submitted to auditors, no cost for travel and attendance shall be taxed and allowed at the intermediate terms, between entering the reference or submission to auditors, and making the report: *Provided*, That if on examination the Court shall be satisfied that such continuance by consent, was for the purpose of a defence and trial, which could not be so well had at the time of the first call, and not for delay, the Court may at their discretion, order full costs to be taxed; and no continuance shall be granted on motion of either party except for good and sufficient cause; and that the same is, in the opinion of the Court, necessary for the furtherance of Justice.

No travel and attendance to be taxed in certain cases.

Proviso.

SECT. 3. *Be it further enacted*, That all writs and processes issuing from the Court of Common Pleas, shall be in the name of the State, and shall bear the test of one of the Justices of said Court; and such writs and processes shall be under the seal of said Court and signed by the Clerk thereof, in the county where the writ or process may be returnable; and shall have force, and be obeyed and executed in every county in the State. And all original processes shall be summons, capias or attachment, and shall be served and returned in the same way and manner as is now provided by law for the service and return of similar processes; and the forms of all processes and executions shall be so far altered and changed, as to conform to the provisions of this Act.

Processes to bear test of one of the Justices, &c.

SECT. 4. *Be it further enacted*, That any party aggrieved at the judgment of any Court of Common Pleas, in any personal action, wherein any issue has been joined, in which the debt or damage demanded shall exceed one hundred dollars, and in any action of replevin or action of trespass *quare clausum fregit*, ejectment, or real action, may appeal therefrom to the next Supreme Judicial Court to be holden within and for the county, where such judgment may be rendered; and the party so appealing, before such appeal be allowed,

Party aggrieved may appeal to the S. J. Court

To recognise; shall recognise, with sufficient surety or sureties to the adverse party, in a reasonable sum, to prosecute his appeal, and to pay all such costs as may arise in any such suit, after such appeal. And when any such appeal in any personal action, except actions of trespass *quare clausum fregit*, and actions of replevin, wherein the value of the property replevied, shall by the finding of the jury exceed one hundred dollars, shall be made by any plaintiff, and he shall not recover more than one hundred dollars, debt or damage, he shall not recover any costs after such appeal; but the defendant shall recover his costs on such appeal against the plaintiff, and shall have a separate judgment therefor; and in case such appeal was made by the defendant, and the debt or damages recovered in the Court of Common Pleas, shall not be reduced, the plaintiff shall be entitled to recover double costs on the appeal; and if the appellant shall fail to enter his appeal in the Supreme Judicial Court, the same court may upon complaint render judgment in such action, according to the provisions of this Act.

restriction
to costs. as

SECT. 5. *Be it further enacted*, That either party aggrieved by any opinion, direction or judgment of any Court of Common Pleas, in any action originally commenced in said Court, in any matter of law, may allege exceptions to the same; which exceptions being reduced to writing in a summary mode, and being presented to the Court before the adjournment thereof, if conformable to the truth of the case, shall be allowed and signed by the presiding Judge or Justice of said Court; and thereupon all further proceedings, in such action in said Court shall be stayed; and the party making such exceptions shall enter such action at the Supreme Judicial Court, at the next term thereof for the same county, and shall produce there all the papers, as in case of appeal. And the Supreme Judicial Court shall have cognizance thereof, and consider and determine the same, in the same manner as they are authorized to do in respect to actions originally commenced and entered in that Court, and shall render judgment thereon, or may grant a new trial at the bar of said Court, as law and justice may require. And

Party aggrieved by any opinion, &c. may allege exceptions;

proceedings stayed;

papers to be produced as in case of appeal. S. J. Court to have cognizance &c.

when any party alleging exceptions as aforesaid, shall fail to enter the action at the first succeeding term of the Supreme Judicial Court for the same county, and complaint thereof shall be made by the adverse party; or whenever the same Court shall determine that any exceptions, so made as aforesaid, are frivolous, and intended only for delay, the same Court shall award double costs of that Court, against the party making such exceptions, and increase of damage by adding to the same, interest thereon to the time of final judgment.

Double costs awarded in certain cases.

SECT. 6. *Be it further enacted,* That the Supreme Judicial Court, from and after the second day of April, shall have original and concurrent jurisdiction with the Court of Common Pleas, of all actions of replevin, trespass *quare clausum fregit*, and of ejectment, or real actions arising within the counties of this State respectively.

S. J. Court to have concurrent jurisdiction of certain actions.

SECT. 7. *Be it further enacted,* That nothing in this Act shall be construed to deprive any party of his rights to a Writ of Error, for any error appearing of record in any action, or to prevent any party aggrieved by the opinion or judgment of said Court of Common Pleas, rendered upon an issue in law, or case stated by the parties, (and where it is not agreed that the judgment of said Court shall be final) from appealing therefrom to the Supreme Judicial Court, nor the party prevailing in such cases from recovering costs: *Provided,* That no stipulation except in actions of replevin, trespass *quare clausum fregit*, and of ejectment, or real action, reserving the right to waive the pleadings or statement of the case made in the Court of Common Pleas shall be allowed; but the Supreme Judicial Court may order amendments or a replender upon such terms and conditions, as law or justice may require.

Nothing in this action to deprive a party of Writ of Error.

Proviso.

SECT. 8. *Be it further enacted,* That the Court of Common Pleas shall have power at the term, when judgment in any action, of which said Court has final jurisdiction is rendered, or at any subsequent term thereof, within one year from the rendition of such judgment, on motion or petition, after giving due no-

New trial may be granted.

tice thereof to the adverse party, to grant a new trial of any such action, for any cause, for which by the common law a new trial may be granted, or when upon due examination, it shall appear to said Court, that justice has not been done between the parties, upon such terms and conditions as the same Court may deem reasonable: *Provided*, That when there has been two verdicts of a Jury in the same action, in favor of the same party a new trial shall not be granted. And said Court shall have power from time to time, to make and establish all such rules for the entry of actions, filing pleas in abatement and demurrers to declarations, for the orderly and well conducting of the business thereof, as may be deemed proper, and which shall not be repugnant to the laws of this State.

Proviso,

Juries to attend.

SECT. 9. *Be it further enacted*, That from and after the second day of April next, the Grand Jury, now required to attend the Circuit Court of Common Pleas in the respective counties, and one or two traverse Juries shall be required to attend the Court of Common Pleas, holden within the respective counties, as the Court may direct, in the same manner and under the same penalties that they are now holden by law to attend the Circuit Courts of Common Pleas, and shall thereafter give their attendance on such days of each term, as shall by the Court of Common Pleas in each county respectively be directed; and writs of *venire facias* shall issue accordingly.

Actions, &c. in the C. C. C. Pleas transferred to this Court.

SECT. 10. *Be it further enacted*, That all actions, suits, matters and things which may be pending in the several Circuit Courts of Common Pleas in this State, and all writs, executions, warrants, recognisances, and processes returnable to, and which would have had day therein, had not this Act been passed, shall after this Act shall take effect, be returnable to, have day in, and be fully acted upon by the Court of Common Pleas, created by this Act in the respective counties, where the same may be pending or are returnable.— And all parties, jurors, witnesses and others, who would have been held to appear at the Circuit Court of Common Pleas, then next to be holden, after this

Act shall take effect, shall be holden to appear at the next Court of Common Pleas in the respective counties. And said Court of Common Pleas in the respective counties, shall have full power and authority to grant any execution to carry into effect any judgment rendered in the Circuit Court of Common Pleas, in the same manner, as said last mentioned Court might, had not this Act been passed.

SECT. 11. *Be it further enacted*, That, from and after the said second day of April, the Court of Common Pleas shall be holden annually, within and for the county of York, at Alfred, on the second Tuesday of February and second Tuesday of October, and at York on the last Tuesday of May; at Portland, within and for the county of Cumberland, on the first Tuesday of March, on the third Tuesday of June, and second Tuesday of December; at Paris, within and for the county of Oxford, on the last Tuesday of February, and third Tuesday of August; at Warren, within and for the county of Lincoln, on the fourth Tuesday of December, at Wiscasset, on the fourth Tuesday of April, and at Topsham, on the fourth Tuesday of August; at Augusta, within and for the county of Kennebec, on the second Tuesday of April, August and December; at Norridgewock, within and for the county of Somerset, on the second Tuesday of March, the last Tuesday of June, and the first Tuesday of November; at Castine, within and for the county of Hancock, on the third Tuesday of March, the second Tuesday of July, and third Tuesday of November; at Bangor, within and for the county of Penobscot, on the first Tuesday of January, and third Tuesday of June; and at Machias, within and for the county of Washington, on the first Tuesday of March, and third Tuesday of September.

SECT. 12. *Be it further enacted*, That each of the Justices of said Court of Common Pleas, shall, during his continuance in office, receive such salary as shall hereafter be established by law. And said Justices, notwithstanding any provision herein contained, may be appointed as soon after the passing of this Act, as the Governor may see fit, provided no salary, which may

be established shall commence till after the said second day of April.

Clerks to pay
over fees.

SECT. 13. *Be it further enacted,* That the respective Clerks of the Courts, in the several counties of the State, shall within ninety days next after the termination of each session of said Court of Common Pleas, within their respective counties, account for on oath, and pay over to the Treasurer of the State all the fees which the Justices of the Circuit Courts of Common Pleas are by law entitled to receive in said county. And if any Clerk shall refuse or neglect to account for, and pay over the fees aforesaid, he shall forfeit and pay in addition to the fees so accrued, a penalty not exceeding five hundred dollars, to be sued for and recovered by the said Treasurer for the use of the State.

Penalty
neglect. for

Act when in-
force.

SECT. 14. *Be it further enacted,* That this act shall take effect and be in force, from and after the second day of April next; and all acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby repealed, from and after said second day of April.

[This Act passed February 4, 1822.]

CHAPTER CXCIV.

AN ACT to provide for carrying into effect certain stipulations in the Act for erecting the District of Maine into a separate State.

Compensation
to Commis-
sioners under
the Act of Sep-
aration.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Commissioners appointed by virtue of the Act, entitled "An Act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State," passed the nineteenth day of June, in the year of our Lord one thousand eight hundred and nineteen, shall each be entitled to, and receive as compensation for their services, five dollars a day for the time they shall be actually engaged in executing the duties assigned them