

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

NINETEENTH LEGISLATURE,

JANUARY SESSION, 1839.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

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1839.

certificate specifying the fact of such entry and the time thereof; which writing signed by the mortgagor or his assignee and said certificate, respectively, shall be recorded within thirty days from the date thereof in the office of the Register of Deeds in the County where the land lies; and unless so recorded within said time such entry shall not be effectual in law for the purpose of foreclosing such mortgage.

If not recorded, to be of no effect.

[Approved by the Governor, February 20, 1839.]

Chapter 373.

AN ACT to abolish the Court of Common Pleas, and establish District Courts.

SEC. 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That there be, and hereby is established a District Court, which shall be holden by one Justice; and shall have original and exclusive jurisdiction of all civil actions where the debt or damage demanded does not exceed the sum of two hundred dollars, excepting such actions where Justices of the Peace, Municipal and Police Courts, now have original jurisdiction, and excepting actions of replevin, trespass quare clausum fregit, ejectment, real actions, and actions against towns; and shall have original and concurrent jurisdiction with the Supreme Judicial Court in all actions above excepted, and also of all civil actions in which the debt or damage demanded exceeds the sum of two hundred dollars; and shall also have jurisdiction of all such offences, crimes and misdemeanors, as before the passage of this act were cognizable by the Court of Common Pleas; and shall also have appellate jurisdiction of all civil actions, and of all crimes and offences

Court established.

Jurisdiction, &c.

where an appeal may now, by law, be made to the Court of Common Pleas, from the judgment or sentence of any Justice of the Peace, or any Police or Municipal Court. And said District Court is hereby fully autho ized to give judgment, award execution, administer 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 Court of Common Pleas, before the passing of this act, were authorized to do, execute or perform.

SEC. 2. *Be it further enacted,* That the State be, and hereby is divided into three Districts, which shall be denominated the Western, Middle and Eastern District. The counties of York, Cumberland, Franklin and Oxford shall constitute the Western District; the counties of Lincoln, Kennebec and Somerset shall constitute the Middle District; and the counties of Waldo, Piscataquis, Penobscot, Hancock and Washington shall constitute the Eastern District. There shall be appointed and commissioned, in manner provided by the constitution, in and for the Western and Middle Districts, each, one person, and in and for the Eastern District, two persons, to be Justices of the District Court; and said Justices, so appointed and commissioned, shall have power to hold the District Courts, within any of the counties of the District for which the said Justice is appointed, at the times and places now established by law for holding the Court of Common Pleas. 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, or to such time as a Justice of said District shall attend; and shall post public notification thereof in writing on the door of the Court

Divided into three Districts, denominated the Western, Middle, and Eastern District.

One Justice to be appointed to each of the Western and Middle Districts, and two Justices for the Eastern District.

Times of holding Courts, &c.

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

In case the Justices of said Court shall be interested or otherwise disqualified in the trial of action, the same to be transferred to Supreme J. Court.

House. And in case the Justice or Justices of said Court shall be interested, or shall be otherwise disqualified to preside in the trial of any action which may be pending in said Court, the same shall be transferred to the Supreme Court.

SEC. 3. *Be it further enacted,* That all writs and processes issuing from the District Court, shall be in the name of the State, and shall bear 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 same may be returnable; and shall have force and be obeyed and executed in every county in the State. And all original process 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 form of all processes and executions shall be so far altered and changed as to conform to the provisions of this act.

The form of processes, &c.

In what cases actions are appealable to the Supreme J. Court.

SEC. 4. *Be it further enacted,* That any party aggrieved at the judgment of any District Court in any personal action wherein any issue has been joined, in which the debt or damage demanded shall exceed two hundred dollars, and in any action of replevin, or action of trespass quare clausum fregit, ejectment, or real action, or action against a town, 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, shall recognize 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, replevin, ejectment, or real actions, and actions against towns, shall be made by any plaintiff, and he shall not recover more

Restrictions as to costs.

than two 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 District Court, shall not be reduced, the plaintiff shall be entitled to recover double costs on the appeal, unless the Justice before whom the trial, in the District Court was had, shall certify that there was just and reasonable cause for such 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.

When double costs are to be allowed.

SEC. 5. *Be it further enacted,* That either party aggrieved by any opinion, direction or judgment of said District 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 Justice of said Court, and thereupon all further proceedings 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 said 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 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

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

Proceedings stayed.

Papers to be produced as in cases of appeal.

Supreme J. Court to have cognizance, &c.

Double costs awarded in certain cases.

Persons aggrieved by any opinion, &c. charged with crime, may allege exceptions, &c.

S. J. Court to have cognizance thereof.

made by the adverse party; or whenever the 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 damages by adding to the same, interest thereon to the time of final judgment. And if any person charged with any crime, offence or misdemeanor in the District Court, shall be aggrieved by any opinion, direction or judgment of said Court in any matter of law, he may allege exceptions thereto, in the same manner and the same proceedings shall be had, as is provided, in the fifth section of this act; and the person making the exceptions shall enter into recognizance with sureties, as the Court shall direct, to enter his appeal at the Supreme Judicial Court at the next term thereof in the said county and produce all papers in the case—and the exceptions being so entered, the Supreme Judicial Court shall have cognizance thereof, and may enter judgment or grant a new trial at the bar of said Court, or remand the same to the District Court, as justice may require; and if the person so excepting shall fail to enter his appeal, and to produce all papers as aforesaid, the Supreme Judicial Court may sentence such person to such punishment as the District Court might have inflicted, or adjudge the recognizance forfeited, or both, as the case may require.

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

SEC. 6. *Be it further enacted,* That the Supreme Judicial Court shall have original and concurrent jurisdiction with the District Court, of all actions of replevin, trespass quare clausum fregit, of ejectment, or real actions, of all actions against towns, and also of all personal actions where the debt or damage demanded exceed the sum of two hundred dollars, arising within the counties of this State respectively. And when any personal action, excepting actions of replevin, trespass quare clausum

fregit, ejectment, or real action, and actions against towns, shall be commenced in the Supreme Judicial Court, and the Plaintiff shall not recover the sum of two hundred dollars debt or damage, he shall recover no costs, unless the presiding Justice, in the trial of said action, shall certify and allow the same.

Regulation as to costs in such cases.

SEC. 7. *Be it further enacted,* That the District Court 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, on motion or petition, if said motion or petition be filed within one year from the rendition of such judgment, after giving due notice 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 consideration and 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 have 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.

Cases in which Court have power to grant new trials.

Provido.

SEC. 8. *Be it further enacted,* That the Grand Jury, now required to attend the Court of Common Pleas in the respective Counties, and one or two Traverse Juries, shall be required to attend the District Court, 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 Court of Common Pleas; and shall thereafter give their attendance on such days of each term, as shall by the District

Juries to attend.

Court, in each County respectively, be directed; and writs of venire facias shall issue accordingly.

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

SEC. 9. *Be it further enacted*, That all actions, suits, matters and things which may be pending in the Court of Common Pleas, and all writs, executions, warrants, recognizances, 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 District Court, created by this act, in the respective Districts and 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 Court of Common Pleas, then next to be holden after this act shall take effect, shall be holden to appear at the next District Court in the respective Counties; and said District Court, in the respective Districts, shall have full power and authority to grant any execution to carry into effect any judgment rendered in the Court of Common Pleas, in the same manner, as said Court of Common Pleas might, had not this act been passed.

Salary.

SEC. 10. *Be it further enacted*, That each of the Justices of the District Court, shall, during his continuance in office, receive a salary of twelve hundred dollars a year, which annual sum shall be allowed and paid to each of the Justices of said Court, out of the Treasury of the State, in equal quarterly payments.

Duties, &c., of
Clerk.

SEC. 11. *Be it further enacted*, That the respective Clerks of the Courts in the several Counties shall be subjected to the duties and liabilities now imposed upon them by the Statutes establishing a Court of Common Pleas.

Acts repealed.

SEC. 12. *Be it further enacted*, That an act passed February fourth, one thousand eight hundred and twenty-two, entitled "An Act to establish a Court of Common Pleas;" also the first, second and

third sections of an act passed on the eleventh day of March, one thousand eight hundred and thirty-five, entitled "An Act to alter and amend the several acts and laws for the administration of justice," and all other acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

SEC. 13. *Be it further enacted,* That this act shall take effect and be in force from and after the first day of April next—*Provided, however,* that Judges of the District Courts may be appointed and commissioned at any time after this act shall be approved by the Governor.

Act when in force.

[Approved by the Governor, February 25, 1839.]

Chapter 374.

AN ACT regulating the fees for Justices writs.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That for any Justice writ hereafter made by any Justice of the Peace, Attorney or Counsellor at Law, or any other person, and for any writ made returnable to any Police or Municipal Court, the price shall be fifty-seven cents, and no more—And any Justice of the Peace, Police or Municipal Judge who shall allow any sum greater than that, in any action tried or defaulted before them, to the plaintiff or plaintiffs shall forfeit and pay to the defendant or defendants a sum not less than five, nor more than ten dollars, to be recovered in action of debt, before any Court of competent jurisdiction to try and determine the same,—and any Attorney or Counsellor at Law, or any other person who shall charge or take of any defendant or defendants any sum greater than fifty-seven cents aforesaid, for any writ aforesaid, by him settled before trial, shall

Price of Justice writ.

Penalty and how recovered.