

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-FOURTH LEGISLATURE

OF THE

**S T A T E O F M A I N E ,**

**A. D. 1844.**

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840, and March 16, 1842.

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*AUGUSTA:*

W<sup>M</sup> R. SMITH & Co., PRINTERS TO THE STATE.

1844.

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PUBLIC LAWS

OF THE

STATE OF MAINE,

1844.

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SECT. 15. All acts or parts of acts, inconsistent with this act, are hereby repealed.

[Approved March 22, 1844.]

CHAP. 127.

Inconsistent provisions repealed.

### Chapter 127.

AN ACT additional to an act for the preservation of salmon, shad and alewives, in the Penobscot river and bay, and their tributary streams.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

Sections five and six of an act, entitled "an act for the preservation of salmon, shad and alewives, in Penobscot river and bay, and their tributary streams," approved March twenty-third, one thousand eight hundred and forty-three, so far as the same relate to the appointment and duties of deputy wardens, are hereby repealed.

Act of March 23, 1843, in part repealed.

[Approved March 22, 1844.]

### Chapter 128.

AN ACT establishing town courts.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. There shall be established, in every city, town and plantation in this state, a court or courts of trial, as hereafter provided, each court to consist of one justice of trials, who shall be appointed and commissioned by the governor, with the advice and consent of the council, and shall hold his office for the term of seven years, according to the provisions of the constitution. Said justice shall have all the powers of a justice of the peace, and original jurisdiction of all suits of a civil nature, where the debt or other matter in demand, does not exceed twenty dollars, concurrent jurisdiction with the district courts in suits from twenty to one hundred dollars, excepting those actions where the title of real estate is put in issue by the pleadings filed in the case, by either party, or where a town is a party in the action. And each justice shall keep full and fair records of his proceedings, and deliver fair copies thereof, when required: which, being duly certified, shall be evidence of as high character as the records of other courts now are by law; provided, however, that none of the provisions of this act

Courts of trial established.

To consist of one justice, how appointed.

Tenure of office.

Powers of justice.

Records and copies.

Same to be evidence.

Proviso.

## CHAP. 128.

shall affect the jurisdiction of the municipal or police judges in the cities of Portland and Bangor.

One justice to be appointed when the number of inhabitants is less than 500.

SECT. 2. In every town or plantation having less than five hundred inhabitants, according to the last census of the United States, the governor may appoint, as aforesaid, one such justice, and in every city, town or plantation, containing more than five hundred inhabitants, shall appoint one such justice, and as often as a vacancy may occur. And in every city, town or plantation, having more than two thousand inhabitants, he shall, if requested by a legal vote of said town or plantation, legally passed at their annual meeting in March or April, or by the mayor and aldermen of said city, appoint one additional justice for said city or town, and said justices shall hold their offices as before provided.

Two justices, if the number exceeds 2,000, if, &c.

Place of holding court.

SECT. 3. All such justices of trials shall have power to hold a court within their several cities, towns and plantations, and may hear and decide causes at their dwelling houses, offices, or any other suitable place, and all process in such cases shall be made returnable accordingly. And all such justices may receive and record the confession of debt made personally by any debtor to any creditor, with or without process, as the parties may agree, and render judgment on such confession, and issue execution thereon.

Power of justices to render judgment and issue execution.

Jurisdiction in criminal cases.

SECT. 4. Every such justice of trials, within this state, shall have, in all criminal causes, the same jurisdiction as is now provided by law for justices of the peace. And may take cognizance of simple larceny, when the property stolen shall not exceed in value twenty dollars, and on conviction, award such sentence as is provided by law for such offences, and shall have exclusive jurisdiction of all offences against the by-laws of cities and towns.

Power in simple larceny. Offences vs. by-laws of towns, plantations, &c.

Government of town courts.

SECT. 5. The courts created by this act, shall be governed in their proceedings in civil actions, by the laws now in force, regulating the proceedings of justices of the peace and of the district courts in this state, unless otherwise provided by this act; and may issue all writs, warrants and precepts necessary to carry into effect the powers granted them by this act; and when no form therefor is prescribed by law, may frame one in conformity with the principles of law, and the usual proceedings of courts in this state.

Writs, warrants, &c.

Form of writs.

Times of holding courts. Jury may be summoned.

SECT. 6. The justices appointed in pursuance of this act, shall hold their courts the first Wednesday in each month, to hear and determine all civil causes, wherein the said justices have jurisdiction, and one jury may be summoned to hear and determine such causes, at such times and places as directed in the venire.

Hour of holding sessions.

And the time set in any such justice's summons for the trial of any cause, shall not be earlier than nine o'clock in the forenoon, nor

later than three o'clock in the afternoon, and said justice shall have power to adjourn his court, from day to day, to complete the trial of any actions that may be brought before him.

## CHAP. 128.

Power of justice to adjourn from day to day.

SECT. 7. It shall be the duty of each city, town and plantation, to provide and have constantly kept, a jury box, for the use of the courts by this act created, in the manner provided by the one hundred and thirty-fifth chapter of the revised statutes, except so far as the provisions of that chapter are altered by this act; the names and number of jurors, of not less than twenty-four in the whole, and not less than one, nor more than eight, for every hundred persons in each city, town or plantation, according to the last census, taken next before preparing the box; but no person whose name is now in the jury box provided by law, or while the same shall remain therein, shall be placed in the box hereby ordered. And the said cities, towns and plantations, shall cause the said jurors to be selected, and their names placed in said box, within one month after the passage of this act. The jurors required by this act shall be compelled to serve in said court as often as their names are drawn out, as aforesaid, from said jury box, unless, for sufficient cause, said justice shall see fit to excuse the attendance of a juror; in which case said justice shall issue a special venire to complete the pannel.

Jury box to be provided.

Method of empanneling jurors.

Jurors compelled to serve, unless, &c.

SECT. 8. Any justice of said court, on any application made to him as hereinafter provided, shall, four days at least before the time of trial, issue his venire directed to any sheriff, deputy sheriff or constable, in said town, city or plantation, and such officer, on receipt thereof, shall notify the clerk of said city, town or plantation, to draw from the jury box provided by this act, as many persons to serve as jurors for said court, as may be required by said venire. And said clerk shall, in the presence of said officer, draw out as many tickets as there shall be jurors required. And the said officer shall, at least two days before the sitting of said court, notify the persons there drawn as aforesaid, in the manner now provided by law; and shall make return of said venire to said court, at or before the time of trial.

Venire to be issued for drawing jurors.

Clerk to draw the requisite number.

Officer to notify and make return.

SECT. 9. The jurors selected and summoned as aforesaid, shall, before entering upon their duties, be sworn by said court, in the same manner as now provided by law, and shall be subject to the same restrictions and regulations that are now provided for traverse jurors, and shall have like powers.

Jurors to be sworn.

SECT. 10. A jury empannelled agreeably to the provisions of this act, is empowered to audit and adjust all accounts and demands committed to them by said justice, and to return a verdict

Power of jurors to audit accounts.

## CHAP. 128.

Proviso. for the balance, provided said balance, exclusive of costs, does not exceed one hundred dollars.

Number of jurors.

SECT. 11. The jury mentioned in this act, may consist of six or a less number of persons, if the plaintiff and defendant, in writing, before said justice of said court, shall so agree before the same is summoned ; and in default of said agreement, it shall consist of twelve persons.

Process, when returnable.

Where returnable and tried, if no justice reside in such city, town or plantation, &c.

SECT. 12. All process before such justices of trials, shall be made returnable within the city, town or plantation, where the plaintiff or defendant resides ; and in all cases within the county where some defendant resides. If there shall not be any such justice within such city, town or plantation, then the same may be made returnable, and tried in the adjoining or nearest city, town or plantation, where such justice may be found, within said county, if either party be an inhabitant of this state ; and if neither party be an inhabitant of this state, the cause may be commenced and tried in any city, town or plantation, in the state.

Writ and service.

Demands in set off.

SECT. 13. The writ in civil actions and the service thereof, shall be the same as is now provided by law, except that it shall be served at least fourteen days, and if either party be a corporation, thirty days, before the return day. Demands in set off may be filed on the day of trial in the way and manner provided in chapter one hundred and fifteen of the revised statutes.

Time allowed parties to appear. Power of justice in regard to non-suit or default.

SECT. 14. One hour, from the time set in the summons for the trial of any civil action, is allowed to the parties to appear ; at the expiration of which time, the said justice may enter a non-suit or default, or proceed to trial on issue joined, and render such judgment thereon as to law and justice shall appertain ; and said justice may at any time less than two hours from the entry of such non-suit or default, at his discretion, on motion of a party and notice to the adverse party, strike off such non-suit or default upon such terms as to him may appear reasonable.

When party is entitled to trial by jury.

Jury fees, &c., paid in advance.

If defendant shall offer to be defaulted, &c.

SECT. 15. Either party in any civil suit before said court of trial, shall be entitled to a trial by a jury, when such party shall request the same of said justice not more than ten and not less than seven days before the time of trial, and in all such causes the jury fees and cost of summoning such jury shall be paid in advance, or the payment thereof secured to the satisfaction of said justice, by the party so requesting a jury, and the said fees and cost shall be made up and allowed in the bill of cost, if the party making said request shall prevail. And any defendant may offer, in writing, to be defaulted at any time after the service of the writ, and shall be subject to the same liability, and entitled to the same benefit upon

said offer, as is provided in the one hundred and fifteenth chapter of the revised statutes.

SECT. 16. In civil actions, an appeal from the judgment of any such justice, to the next term of the supreme judicial court, in the county where such judgment is rendered, may be taken by either party, if claimed within two days from the rendition thereof, except in cases hereinafter provided. And the party appealing shall recognize to the adverse party to prosecute said appeal with effect, and pay all intervening damages occasioned by delay, with additional cost, if judgment be affirmed, and shall be allowed ten days to furnish the securities required.

Appeal may be taken.

Liabilities of appellants.

SECT. 17. No appeal shall be allowed in either of the following cases, viz: First—when judgment was rendered on non-suit or default.

When appeal shall be allowed.

SECT. 18. Whenever it shall appear, by the pleading in any action, that the title to real estate is concerned or brought in question, the case shall, at the request of either party, be removed to the supreme judicial court, next to be holden in said county, and there shall be tried and determined in the same manner as if it had been originally commenced in that court.

When title to real estate is brought in question, &c.

SECT. 19. The party requiring the cause to be removed by appeal, shall recognize to the other party in a reasonable sum, with sufficient surety or sureties, conditioned to enter the action at the supreme judicial court next to be holden in the same county; and if he shall fail so to recognize, the justice shall proceed to hear and decide, in like manner, as if no such request had been made to remove said cause.

Party appealing to recognize in sufficient sums, &c.

SECT. 20. The party so recognizing, shall produce, at the supreme judicial court, an attested copy of the record, and all such papers as are required to be produced by an appellant; and if he shall fail so to do, or to enter his said action as before provided, he shall, upon the complaint of the adverse party to the said supreme judicial court, be nonsuited or defaulted, as the case may be; and such judgment shall be rendered thereon, as law and justice shall require.

If party recognizing fail to produce copy of record, &c.

SECT. 21. Any party aggrieved by any opinion, direction or judgment, of any justice appointed in pursuance of this act, in any matter of law, in a cause not otherwise appealable, may allege exceptions to the same; and when reduced to writing in a summary way, and being found correct, the exceptions shall be allowed, and signed by the justice of said court before the adjournment thereof without day; and all further proceedings in said court shall be stayed, excepting that any trial before a jury shall proceed

Remedy for party aggrieved.



## CHAP. 128.

Duty of party alleging exceptions.

until a verdict is rendered; and the excepting party shall recognize as is provided in section sixteen. In such case, the party, alleging the exceptions, shall enter the action in the supreme judicial court, at the next term thereof in the same county, and produce all the papers, as in the case of appeal; and the supreme judicial court shall have cognizance of the cause, and determine the same, as they may actions originally commenced in that court, and render judgment, or grant a new trial thereon. When the party alleging the exceptions shall fail to enter the actions at the supreme judicial court, at the next term, and the adverse party shall enter his complaint; or when the court shall determine the exceptions frivolous, or alleged for delay, the court shall award double costs against the excepting party, and increase the damages by adding legal interest.

Duty of court, if party alleging exceptions shall fail to enter the actions, &c.

Referees may be selected.

SECT. 22. Any such justice, on application of any persons or parties having controversies between them of a civil nature, may issue his rule of reference to such person or persons as the parties may mutually choose as referees, empowering them to notify the parties and determine the matter so submitted by such rule, and make return of their doings to said justice, within ten days after they shall have determined the matter submitted to them; and the report of such referees, when made pursuant to such rule, and returned to such justice, shall be final and conclusive between the parties in the matter submitted, and judgment may be rendered by said justice, and execution thereon, including costs for the party recovering. But no execution shall issue on such judgment, or on any verdict of a jury, within forty-eight hours from the time such judgment or verdict is rendered.

Decision of referees final.

When execution shall issue.

Records property of city, town, &c.

Duty of justice, at expiration of his term, to deliver records and papers to his successor.

Forfeiture for neglect.

SECT. 23. The records of the said courts of trial, and the files connected therewith, shall be the property of the city, town or plantation, wherein such court is held, and each justice presiding over such court, at the expiration of his term, shall deliver such records and files of papers to his successors in office, or deposit the same with the clerk of such city, town or plantation, within four weeks after the expiration of the term for which he was appointed to preside over such courts, and thereafter shall, for every month's neglect, forfeit and pay to the treasurer of such city, town or plantation, one hundred dollars, to be recovered in an action of debt before any court proper to try the same.

Executions when returnable and how satisfied.

SECT. 24. When any execution shall issue from the said courts of trial, it shall be made returnable in three months; and all executions for any sum exceeding twenty dollars, debt or damage, may be satisfied by levying the same upon the real estate of the

debtor, as is provided for in the ninety-fourth chapter of the revised statutes. And when said execution is satisfied by levying as aforesaid, the plaintiff may have recorded in the registry of deeds, with the execution and return, a copy of the original writ and judgment on which said execution issued, and a certified copy thereof shall be received as evidence in case of the loss of the original.

Execution may be recorded, and a certified copy shall be evidence in case of loss of the original.

SECT. 25. All jurors attending at such courts shall be allowed one dollar per day for each day's attendance, and the same fees for travel as is allowed by law to witnesses in said court; and the said justice shall make up the account of attendance of jurors, and pay the same out of the money placed in his hands by the parties claiming such jury. All jurors attending court, as aforesaid, shall be entitled to receive the above fees, whether any suit is or is not brought before them.

Compensation of jurors.

SECT. 26. Each justice aforesaid shall be entitled to receive seventy-five cents for every jury trial before him, in addition to the fees now established by law, which shall be in full for drawing jurors, issuing venires, swearing jurors, and all other extra services growing out of such jury trial.

Fees of justice.

SECT. 27. The same fees which are allowed for like processes in justice courts, to parties, officers and witnesses, shall be allowed by this court, except as hereinafter provided.

Fees to officers, witnesses, &c.

SECT. 28. Any sheriff or deputy sheriff of the county, or constable of the city, town or plantation, in which said court of trial is held, shall be a proper officer of such court; and in case no officer shall be in attendance at such court, the said justice may appoint some suitable person to take charge of the jury; and such person shall be duly sworn, and allowed the same pay as jurors; and in no case shall any officer receive any greater fee for attending said court and taking charge of jurors, than is allowed to said jurors.

Officers of court.

Allowed the same as jurors.

SECT. 29. Any justice, appointed under this act, may appoint and employ, at his own expense, a recorder, who shall be a justice of the peace for said county, duly qualified and sworn; and in case of absence or sickness of the said justice of trials, the recorder shall exercise all the powers of said justice, except the trial of issues in civil actions. In case of the death of said justice of trials, the said recorder shall have all the powers, be liable to all the duties, and entitled to all the fees for said duties, until a justice of trials shall be commissioned and sworn.

Justice may employ recorder.

Duties of recorder.

SECT. 30. No justice of the peace in any city, town or plantation, wherein said court of trials shall be established, shall have or exercise any jurisdiction in the trial of civil causes.

Powers of justices of the peace, limited.

## CHAP. 128.

Judgment not valid, unless, &c.

Justice authorized to grant continuances.

Trial of causes where justice is interested.

To be submitted for the approval of the inhabitants of the several counties in this state.

Votes to be counted by governor and council.

Governor to issue proclamation making known what counties have adopted this law.

Appointment of justices.

Proviso in regard to municipal and police courts.

SECT. 31. No judgment of any such justice of trials shall be valid, unless he shall be present with the writ at the place appointed for trial, within two hours after the time mentioned in such writ, unless the case be continued, and said justice is authorized to grant continuances, in conformity with the provisions of section fourteen, chapter one hundred and sixteen of the revised statutes.

SECT. 32. All causes, either civil or criminal, in which any justice appointed by virtue of this act is a party or interested, may be brought before any justice of trials in either of the adjoining towns in the same county.

SECT. 33. It shall be the duty of the aldermen of cities, selectmen of towns, and assessors of plantations, within this state, to insert in their several warrants, notifying the legal voters therein to assemble in ward, town and plantation meetings, as the case may be, for the election of state officers, on the second Monday of September next, an article requiring the inhabitants of said cities, towns and plantations, legally qualified to vote for the choice of state officers, to give in their votes of approval or disapproval of said act ; and so many, as are in favor of said act becoming a law, shall give in their ballots with the word "yes" written or printed thereon ; and so many, as are opposed to the said act becoming a law, shall give in their ballots with the word "no" written or printed thereon, and the ballots shall be received in separate boxes, be sorted, counted and declared, and lists made out of the votes, by the clerks, and returned to the office of the secretary of state, in the same manner as votes for senators ; and the governor and council shall count the same ; and if a majority of votes in any county or counties shall be in favor of said act becoming a law, it shall be the duty of the governor forthwith to issue his proclamation, making known that fact, and also that said act shall take effect and have the force of law in such county or counties, in thirty days from the date of his said proclamation. This act shall not take effect until thirty days after such proclamation shall have been made, and then only in such county or counties as shall have given a majority of votes in favor thereof, as is herein provided. And it shall be the duty of the governor, by and with the advice of the council, forthwith to make appointment of justices for said courts, in the said county or counties in which this act shall take effect, in the manner herein provided. But this act shall not be so construed as to prevent any justice of the peace or judge of any municipal or police courts from prosecuting to final judgment any suit commenced prior to this act taking effect ; and to renew, from time to time, all executions which may have been

issued by said justices or judges. All acts and parts of acts, contrary to the provisions of this act, are hereby repealed. CHAP. 129.

[Approved March 22, 1844.]

### Chapter 129.

AN ACT in relation to the sale of timber and timber lands.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

SECT. 1. The land agent is hereby authorized to sell any of the public lands of this state, (except those lotted for settlement,) under the direction of the governor and council, either at public auction or private sale, in such quantities as shall best suit purchasers: provided not more than three townships shall be sold in any one year. The purchaser shall pay at least one fourth part of the purchase money at the time of sale, and give good and sufficient notes, in the opinion of the land agent, for the remainder, payable in one, two and three years, with interest. The land agent may give to the purchaser a deed, reserving a lien on the land and timber, conditioned that on payment of the purchase money, according to the tenor of the notes, the deed shall be good and sufficient to convey the land; but that the fee shall be and remain in the state until the payments are fully made.

SECT. 2. In all sales of timber, the minimum price of the third class shall not be less than two dollars per thousand feet, and in all cases, after timber has been offered at auction, and not sold, or the terms of sale not complied with, the agent may sell at private sale, not exceeding ten millions feet, board measure, of board logs, in any one year, on lands belonging to this state.

SECT. 3. If at any time the agent shall suspect that the purchaser of timber does not intend to cut the timber purchased, but that he has bought it with the intention of preventing operation upon it, he may require the purchaser to pay so much for stumpage in advance, as he may think proper, not however exceeding two thousand dollars on a township, to be forfeited to the state, provided the purchaser neglects to put on teams and cut and haul the timber according to the terms of the sale; but to be accounted for in part payment of stumpage, if he shall put on teams according to the terms of the contract.

SECT. 4. No part of the act in relation to the sale of timber on the public lands, approved March fourth, eighteen hundred and

Sale of public lands.

Proviso.

Payments.

Form of deed from land agent.

Minimum price.

Amount of sales of lumber limited.

Power of land agent to prevent imposition.

Construction of act of March 4, 1843.