

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FORTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1868.

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

AUGUSTA:
OWEN & NASH, PRINTERS TO THE STATE.
1868.

PUBLIC LAWS

OF THE

STATE OF MAINE.

1868.

Chapter 151.

CHAP. 151.

An act to facilitate the prompt administration of justice by establishing a superior court in the county of Cumberland.

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

SECT. 1. A superior court is hereby established at Portland, within and for the county of Cumberland, consisting of one justice, who shall be an inhabitant of said county, of sobriety of manners and learned in the law ; he shall be appointed, commissioned and qualified according to the constitution, and shall reside, during his continuance in office, in Portland.

Superior court for Cumberland co. established.

—appointment and qualification of judge.

SECT. 2. Said justice shall establish a seal for said court ; and all writs and processses issuing therefrom shall be in the name of the state, of the usual forms, bearing the test of said justice, under the seal of said court, and shall be signed by its clerk : they shall be obeyed and executed throughout the state.

Seal of court. Writs and processses, how issued, and form.

SECT. 3. The clerk for the time being of the supreme judicial court in said county shall also be the clerk of said superior court, and shall receive for his services as such the fees allowed other clerks for similar services in the supreme judicial court. He shall appoint a deputy, approved by said justice, who shall act as clerk of said superior court whenever said court and the supreme judicial court happen both to be in session in said county. And whenever said clerk of the supreme judicial court is absent, or the office is vacant, said justice may appoint one to supply the vacancy during such absence, or until an appointment is made by the governor and council, or by the supreme judicial court.

The clerk and his compensation.

May appoint a deputy.

Absence of clerk, or vacancy in office of, how supplied.

SECT. 4. The sheriff of the county of Cumberland shall attend said superior court, unless the supreme judicial court shall be in session in said county, in which case he shall specially designate a deputy, approved by said justice of said superior court, so to attend. And whenever it shall happen that said justice is prevented from attending at the time and place at which said court by law or by adjournment ought to be held, said sheriff or such deputy shall by oral proclamation, adjourn said court from day to day, until said justice shall attend.

The sheriff of the county or a deputy to attend.

When judge does not attend, court to be adjourned.

SECT. 5. Within said county, said superior court shall have exclusive appellate jurisdiction of civil appeals from municipal courts and trial justices ; exclusive original jurisdiction of actions of scire facias on judgments and recognizances not exceeding five hundred dollars ; of all bastardy trials, and of all other civil actions at law not exclusively cognizable by municipal courts and trial justices, where the damages demanded do not exceed five hundred dollars, except complaints for flowage, real actions, actions of trespass quare clausum ; and concurrent original jurisdiction of actions of

Jurisdiction.

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Terms of court. **SECT. 6.** Said court shall be held on the first Tuesday of every month, excepting June, July and August. Traverse jurors shall be drawn and returned to serve at said terms as in the supreme judicial court, except that the same jurors may be required by the

Jurors, how drawn and returned. justice to serve for two successive terms. All actions shall be made returnable at one of the three terms next begun and held after

Actions, when returnable. the commencement of such actions. If the plaintiff desires a jury trial, he shall indorse the same upon his writ at the time of entry. The defendant shall, within fourteen days after entry, file his pleadings, and if the plaintiff has not demanded a jury, the defendant shall indorse on his plea his demand for a jury, if he desires one. Whenever a jury shall be so demanded by either party, the

Proceedings if jury trial is desired by plaintiff or defendant. clerk shall enter the fact on the docket, and all other cases, except appeals, shall be tried by the justice without the intervention of a

All other cases except appeals, to be tried by justice. jury, subject to exceptions in matters of law, in term time, or if both parties desire, at chambers. The party demanding a jury shall pay the jury fee, and tax the same in his costs, which shall be

Jury fee, how paid. the same as in the supreme judicial court, if he prevails ; but in cases actually disposed of without a verdict, the jury fee, if any has been paid, shall be returned to the party paying it. When a defendant, legally served, does not appear by himself or attorney within the first three days of the term, he shall be defaulted as in the

Defendant to be defaulted if he fails to appear. supreme judicial court. If the defendant does not file his pleadings as hereinbefore provided, he shall be defaulted on the first day of the next term after entry, unless the court for good cause shall grant leave to file a plea or shall otherwise lawfully dispose

Proceeding if defendant does not file his pleadings. of the action. All actions duly answered to shall be in order for trial at the next term after entry, and shall be so tried, except for

Order of trial of actions. good cause. Appeals shall be entered by the appellant as in the supreme judicial court, and a jury fee paid by him at the time of entry, and appeals shall be in order for trial at the first term.

Appeals, how entered. **SECT. 7.** Exceptions may be alleged as in the supreme judicial court and entered, heard and determined at the law term held in the western district, provided that when the next law term happens to be held in either of the other districts, the justice of the superior court may, on motion of the party not excepting, certify the exceptions to said next law term, if, in his opinion, they are alleged, mainly for delay, but the party so moving shall be deemed to waive his right to be heard in opposition to said exceptions, which shall be entered and determined at said next law term without argument by said party and upon the oral or written argument of the party excepting. Cases certified upon agreed statement of

Exceptions may be alleged; proceedings. facts, reports and motions for new trials, shall be entered, heard

Cases certified upon agreed statement, &c.,

and determined at the next law term in the western district, but any case for the law court may, by agreement of parties, be entered at the next law term held in either district. And all exceptions arising in cases within the exclusive jurisdiction of said superior court may be certified at once by said justice to the chief justice of the supreme judicial court and shall, when so certified, be argued in writing on both sides within thirty days thereafter unless the justice of said superior court shall, for good cause, enlarge the time, and exceptions so certified shall be considered and determined by the justices of the supreme judicial court, as soon as may be. Decisions of the law court on all exceptions and questions from said superior court shall be certified to the clerk of said superior court with the same effect as in cases originating in the supreme judicial court in said county.

SECT. 8. When a demurrer to a declaration is overruled, the defendant, notwithstanding he excepts, may plead anew within such time as the justice orders, but in all cases where exceptions are alleged by the defendant, the action shall, notwithstanding, remain upon the docket of said superior court and be proceeded with as if no exceptions had been taken, until the case is in such a condition that the overruling of said exceptions would finally dispose of it. And the action shall then be transferred to the law court, or certified to the chief justice thereof, as hereinbefore provided for the hearing and determination of all exceptions arising in any stage of the case.

SECT. 9. The supreme judicial court, sitting as a court of law for the western district, shall have the same jurisdiction of all questions of law, motions for new trials, and questions arising on reports or agreed statements of facts originating in said superior court, as if they had originated in the supreme judicial court for Cumberland county; and said law court sitting in either of the other districts shall have the same jurisdiction of all questions and motions certified thereto from said superior court as hereinbefore provided. And all provisions of law and rules of the supreme judicial court relative to the transfer of actions and other matters from the supreme judicial court for said county, or from its docket to the docket of said law court, and all provisions of law and rules regulating proceedings in such cases, and the effect of such proceedings, shall apply to the transfer of actions from said superior court or its docket to said law court, and to the proceedings in such cases, and the effect thereof, except so far as they may be inconsistent with the foregoing provisions of this act.

SECT. 10. Said superior court is hereby authorized to administer all necessary oaths, render judgment, and issue execution, punish for contempt, and compel attendance, as in the supreme judicial court; to make all such rules and regulations, not repug-

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to be determined at next law term in W. D., but by agreement in any district.

Certain cases may be certified at once to chief justice of S. J. C.

Decisions to be certified to the clerk.

When demurrer is overruled defendant may plead anew.

Actions to remain on the docket until finally disposed of in superior court.

The law court for W. D. to have same jurisdiction over all questions of law, &c., as over those originated in S. J. C. for Cumberland county.

Transfer of actions, &c., to law court to be same as from S. J. C. for Cumberland county.

Authority of the court.

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nant to law, as may be necessary and proper for the administration of justice promptly and without delay; and the provisions of law relative to the jurisdiction of the supreme judicial court in said county over parties, the arrest of persons, attachment of property, the time and mode of service of precepts, proceedings in court, the taxation of costs, the rendition of judgments, the issuing, service and return of executions, and all other subjects, are hereby made applicable and extended to said superior court in all respects, except so far as they are modified by the provisions of this act; and said superior court is hereby clothed as fully as the supreme judicial court with all the powers necessary for the performance of all its duties.

Final judgment may be re-examined in S. J. C.; proceedings.

SECT. 11. Final judgments in said superior court, may be re-examined in the supreme judicial court on a writ of error, or on petition for review, and when the judgment is reversed, the supreme judicial court shall render such judgment as said superior court should have rendered, and when a review is granted, it shall be tried in said supreme judicial court, which shall have the same power to grant writs of supersedeas of executions issued from said superior court as it has of executions issued from the supreme judicial court.

Justice of S. J. C. authorized to hold court in the absence or sickness of justice.

SECT. 12. In case the justice of said superior court should, by reason of continued sickness, or other cause, be prevented from holding a term or terms of said court, any justice of the supreme judicial court may, at the request of said justice of said superior court, hold such term or terms of said superior court, in place of the justice thereof. And during a vacancy in the office of said justice of said superior court, all writs issued from the office of the clerk thereof, shall bear test of any one of the justices of the supreme judicial court. Whenever the justice of said superior court shall be disqualified by interest or other lawful cause from trying any cause pending in said court, said case shall thereupon be transferred to the docket of the supreme judicial court for said county, and disposed of in said court according to law.

Test of writs during vacancy in office of justice.

Cases to be transferred to S. J. C. when justice disqualified.

When act takes effect.

SECT. 13. This act shall take effect March first, eighteen hundred and sixty-eight, and the first term of said superior court shall be held on the first Tuesday of April, eighteen hundred and sixty-eight. At any term of the supreme judicial court for said county of Cumberland, after the next April term thereof, any action pending therein which would fall within the exclusive jurisdiction of said superior court, as hereinbefore defined and established, with all papers belonging thereto and orders and decrees thereon, may, on motion of either party, be transferred from the docket of said supreme judicial court to the docket of said superior court, and entered, tried and have day therein as if it had originally been commenced therein, provided that the justice presiding in said

Actions in S. J. C. for Cumberland co. may be transferred to the superior court on motion.

supreme judicial court believes that a speedier trial may thus be obtained. And upon the taking effect of this act, the jurisdiction of the supreme judicial court for the trial of civil cases in said county, shall be limited in conformity to the foregoing provisions; and all acts and parts of acts relating to courts and judicial proceedings shall be modified so far as to give full effect to this act, and all acts and parts of acts inconsistent with this act are hereby repealed.

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Jurisdiction of S. J. C. in Cumberland co. limited.

SECT. 14. The justice of said superior court may be appointed, commissioned and qualified at any time after the passage of this act, and his salary shall be twenty-five hundred dollars, payable quarterly.

Time of appointment, &c., of justice and his salary.

Approved February 14, 1868.

Chapter 152.

An act relating to waiver of demand and notice by endorsers of promissory notes and bills of exchange.

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

SECT. 1. Hereafter no waiver of demand and notice within this state, by an endorser of any promissory note or bill of exchange, shall be valid unless the same shall be in writing, signed by such endorser or his lawful agent.

Waiver of demand, &c., by indorser not valid unless in writing.

SECT. 2. This act shall take effect when approved.

Approved February 14, 1868.

Chapter 153.

An act to amend section forty-nine of chapter eighty-one of the revised statutes.

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

SECT. 1. Section forty-nine of chapter eighty-one of the revised statutes is hereby amended by adding the words, 'the appraisers 'may be sworn by the officer without fee, or by a justice of the 'peace or trial justice,' so that the section shall read as follows:

R. S., chap. 81, sect. 49, amended.

'SECT. 49. The appraisers shall be appointed, one by the creditor, one by the debtor, and one by the officer; and if the creditor 'or debtor neglects to appoint one, the officer shall appoint one in 'his behalf. The appraisers may be sworn by the officer without 'fee, or by a justice of the peace or trial justice.'

Appraisers, how appointed.

—to be sworn.

SECT. 2. This act shall take effect when approved.

Approved February 17, 1868.