

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1878.

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1878.

PUBLIC LAWS
OF THE
STATE OF MAINE.
1878.

Chapter 9.

CHAP. 9.

An act to amend section one of chapter two hundred and twenty-three of the Public Laws of eighteen hundred and seventy-one, relating to Fares on Railroads.

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

Section one of chapter two hundred and twenty-three of the public laws of eighteen hundred and seventy-one, is hereby amended by adding thereto the following : ' provided, that railroad companies may sell special tickets at less than the regular rates of fare, to be used only as provided on the ticket,' so that said section, as amended, will read as follows :

Sec. 1, ch. 223, public laws 1871, amended.

'SECT. 1. No railroad company shall limit the right of a ticket-holder to any given train, but such ticket-holder shall have the right to travel on any train, whether regular or express train, and shall have the privilege of stopping at any of the stations along the line of the road at which such trains stop ; and such tickets shall be good for a passage as above for six years from the day it was first used ; *provided*, that railroad companies may sell special tickets at less than the regular rates of fare, to be used only as provided on the ticket.'

Railroad tickets good for six years.

Proviso. Railroad companies may sell special tickets.

Approved February 5, 1878.

Chapter 10.

An act to facilitate the prompt administration of justice by establishing a Superior Court in the county of Kennebec.

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

SECT. 1. A superior court is hereby established at Augusta, within and for the county of Kennebec, 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.

Superior court for Kennebec county, established. Appointment and qualification of justice.

SECT. 2. Said justice shall establish a seal for said court ; and all writs and processes issuing therefrom shall be in the name of the state, of the usual forms, bearing the teste 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 processes, how issued, and form.

CHAP. 10.

Clerk and his compensation.

—shall appoint a deputy, when.

Absence of clerk or vacancy in office, how filled.

Sheriff of the county or a deputy to attend.

When the justice does not attend, sheriff to adjourn the court.

Jurisdiction.

Terms.

Jurors, how drawn and returned.

Actions, when returnable.

SECT. 3. The clerk for the time being of the supreme judicial court in said county shall also be 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.

SECT. 4. The sheriff of the county of Kennebec 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.

SECT. 5. Within said county, said superior court shall have exclusive appellate jurisdiction of civil appeals from municipal courts, police 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, police courts, and trial justices, where the damages demanded do not exceed one thousand dollars, except complaints for flowage, real actions, actions of trespass quare clausum; and concurrent original jurisdiction of proceedings in habeas corpus.

SECT. 6. Said court shall be held on the first Tuesday of February and April, second Tuesday of June, and first Tuesday of September and December. Travers 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 justice to serve for two successive terms. All actions shall be made returnable at one of the two terms next begun and held after the commencement of such actions. If the plaintiff desires a jury trial, he shall indorse the same

CHAP. 10.

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 clerk shall enter that fact on the docket, and all other cases, except appeals, shall be tried by the justice without the intervention of a jury, subject to exceptions in matters of law, in term time, or if both parties desire, at chambers. Whenever, by accident or mistake, the plaintiff fails to indorse upon his writ at the time of entry a request for a jury trial, or if the defendant, by accident or mistake, shall fail to indorse upon his plea when filed, a demand for a jury, the court may, on motion of either party, at its discretion, order a trial by jury in the cause. 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 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 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 good cause, and in no case shall a plaintiff recover for travel and attendance for more than two terms. Appeals shall be entered by the appellant as in the supreme judicial court, and shall be in order for trial at the first term.

SECT. 7. Exceptions may be alleged as in the supreme judicial court, and entered, heard and determined at the law term held in the middle 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 statements of facts, reports and motions for new trials, shall be entered, heard and determined at the next law term in the middle district, but any case for the law court may, by agreement of

Proceedings, if jury trial is desired by either party.

All other cases, except appeals, to be tried by the justice.

Court may order trial by jury.

Defendant to be defaulted, if he does not appear.

Proceedings if defendant does not file pleadings.

Order of trial of actions.

Appeals, how entered.

Exceptions may be alleged as in S. J. court.

—proceedings.

Cases certified upon agreed statement, when and where determined.

CHAP. 10.

Exceptions may be certified to chief justice of S. J. court.

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 to be certified to the clerk.

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.

When a demurrer is overruled, defendant may plead anew.

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.

Action to remain on docket until overruling of exceptions would dispose of it.

—transferred to law court or chief justice.

The law court for M. D. to have same jurisdiction over questions of law, &c., as over those originating in S. J. C. for Kennebec county.

SECT. 9. The supreme judicial court, sitting as a court of law for the middle 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 Kennebec 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

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

far as they may be inconsistent with the foregoing provisions of this act. CHAP. 10.

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 repugnant 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.

Authority of the court.

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.

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

—proceedings.

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 teste 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.

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

During a vacancy in the office of justice, writs shall bear teste of justice of S. J. C.

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

CHAP. 10.

Act to take effect
March 1, 1878.

Actions in S. J. C.
for Kennebec
county, may be
transferred to
superior court, on
motion.

Jurisdiction of
the S. J. C. in
Kennebec county
limited.

Appointment,
qualification and
salary of justice.

Jurisdiction over
criminal cases in
Kennebec county
transferred from
S. J. C.

Terms designated
for criminal and
civil business.

All criminal pro-
cesses pending at
end of next Octo-
ber term of S. J.
C. and all pro-

SECT. 13. This act shall take effect March first, eighteen hundred and seventy-eight, and the first term of said superior court shall be held on the first Tuesday of April, eighteen hundred and seventy-eight. At any term of the supreme judicial court for said county of Kennebec, held after the passage of this act, 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 been originally commenced therein; *provided*, that the justice presiding in said supreme judicial court believes that a speedier trial may thus be had. 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.

SECT. 14. The justice of said superior court may be appointed, commissioned and qualified at any time after the approval of this act, and his salary shall be two thousand dollars, payable quarterly.

SECT. 15. The original and appellate jurisdiction in all criminal matters now vested in, and exercised by the supreme judicial court within and for the county of Kennebec, and all powers incident thereto, shall, at the end of the next October term thereof, be transferred to and conferred upon the superior court within and for said county, which court shall thereafter exercise the same in the same manner as theretofore authorized by law to be exercised by the supreme judicial court in said county.

SECT. 16. Said criminal business of said county of Kennebec shall, after the month of November next, be transacted at the terms of said superior court held on the first Tuesdays of December, April and September, together with the civil business of said court.

SECT. 17. All indictments and informations, and all criminal processes pending in said supreme judicial court for said county at the end of said next October term thereof, shall be

transferred to said superior court, and shall be entered upon the docket of the same at the next December term thereof, and shall have day therein; and all warrants and recognizances, appeals in criminal cases, and all criminal processes whatever, which but for the passage of this act would be returnable to, or which by law would be entered in said supreme judicial court in said county, on the third Tuesday of October, eighteen hundred and seventy-eight, shall be returnable to and entered upon the docket of said superior court at said December term thereof, and shall have day therein; and all grand jurors, witnesses and others, in criminal matters, who would, but for the passage of this act, be held to appear at said supreme judicial court for said county, on the third Tuesday of October, eighteen hundred and seventy-eight, shall be held to appear at said December term of said superior court, and said grand jurors shall also attend at the April term of said superior court in the year eighteen hundred and seventy-nine. Venires for grand jurors to serve at said superior court, shall be issued at least forty days before the first Tuesday of September, annually, and such jurors shall serve at every term of said superior court for the transaction of criminal business throughout the year.

cesses returnable after that date, transferred and made returnable to December term of superior court

All jurors and witnesses held to appear at October term of S. J. C. to appear at said December term.

Grand jurors to attend April term. 1879.

Venires for grand jurors, when to be issued.

—term of service

SECT. 18. All exceptions or questions of law arising in any way during the trial of criminal cases in said superior court, shall be transferred to the law docket of the supreme judicial court for the middle district, and shall have day therein; and if said exceptions are sustained or a new trial is ordered, the cause shall be remanded to said superior court for trial. All motions for a new trial in criminal cases tried in said superior court, shall be heard and finally determined by the justice thereof.

Exceptions and questions of law to be heard at law term S. J. C. for middle district.