

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

SIXTY-FIFTH LEGISLATURE

OF THE

STATE OF MAINE.

1891.

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1891.

PRIVATE AND SPECIAL LAWS
OF THE
STATE OF MAINE.

1891.

Chapter 152.

An Act to amend chapter one hundred and thirty-five of the Private and Special Laws of eighteen hundred and seventy-five, entitled "An Act to establish a Municipal Court in the city of Auburn," as amended by chapter one hundred and eighty-six of the Private and Special Laws of the same year, and chapter fifty-one of the Private and Special Laws of eighteen hundred and eighty-one.

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

SECT. 1. Chapter one hundred and thirty-five of the private and special laws of eighteen hundred and seventy-five, entitled "An Act to establish a municipal court in the city of Auburn," as amended by chapter one hundred and eighty-six of the private and special laws of the same year, and chapter fifty-one of the private and special laws of eighteen hundred and eighty-one, is hereby further amended so that the same, when amended, shall read as follows :

Ch. 135, Private
Laws of 1875.

SECT. 1. A municipal court is hereby established in and for the city of Auburn, to be denominated the municipal court of the city of Auburn, which shall be a court of record and have a clerk and a seal, and consist of one judge appointed as provided in the constitution and who shall be, ex-officio, a justice of the peace and of the quorum and have and exercise concurrent authority and jurisdiction with trial justices over all matters and things by law within their jurisdiction, and such authority and jurisdiction additional thereto as is conferred upon him by this act and who shall receive from said city an annual salary of eight hundred dollars, to be paid to him in quarterly payments.

Municipal Court
of the city of
Auburn,
established.

—a court of
record, with
seal.

Judge and
jurisdiction.

—salary.

SECT. 2. Said court shall have jurisdiction as follows :

I. Exclusive jurisdiction of all offenses against the ordinances or by-laws of said city, and all such other criminal offenses and misdemeanors committed therein as are cognizable by trial justices; and concurrent jurisdiction with trial justices in the county of Androscogging of all like offenses and misdemeanors not herein placed within its exclusive jurisdiction, when committed in any town or city in said county except Lewiston.

Exclusive
jurisdiction in
certain cases.

—concurrent
jurisdiction with
trial justices.

II. Exclusive original jurisdiction of all civil actions wherein the debt or damages demanded do not exceed twenty dollars, and both parties, or any plaintiff and a person summoned as a trustee, reside in the city of Auburn, including prosecutions for penalties in which said city is interested and

Original
exclusive
jurisdiction
where damages
do not exceed
\$20, etc.

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actions of forcible entry and detainer arising therein; and concurrent jurisdiction with trial justices in said county of all other civil actions and other civil proceedings cognizant by them, not within the exclusive jurisdiction of said court or of the municipal court of the city of Lewiston; provided, that any civil action, in which the judge or clerk is interested, but which otherwise would be within the exclusive jurisdiction of said court, may be brought in and disposed of by the Lewiston municipal court in the same manner and with like effect as other actions therein.

Original
jurisdiction,
concurrent with
the Supreme
Judicial Court.

III. Original jurisdiction concurrent with the supreme judicial court, of the offenses described in sections one, six, seven and nine of chapter one hundred and twenty of the revised statutes, when the alleged value of the property exceeds twenty but does not exceed fifty dollars, of the offenses described in section twenty-eight of chapter one hundred and eighteen of the revised statutes; of the offenses described in sections one and four of chapter one hundred and twenty-six of the revised statutes, when the alleged value of the property fraudulently obtained, mortgaged or sold, or fraudulently removed or concealed, does not exceed fifty dollars, and on conviction may punish for either of said offenses by fine not exceeding fifty dollars and by imprisonment in the county jail not more than four months; and also of the offense described in section six of chapter one hundred and twenty-four of the revised statutes, and on conviction may punish therefor by fine not exceeding fifty dollars and by imprisonment in the county jail not more than thirty days; and also of the offenses described in section four of chapter one hundred and forty-one of the revised statutes and on conviction, may sentence therefor to imprisonment in the county jail not more than sixty days, and of the offenses described in sections seventeen and twenty-two of chapter one hundred and twenty-eight of the revised statutes, relating to tramps, as amended by chapter two hundred and eighty-eight of the public laws of eighteen hundred and eighty-nine, and on conviction may punish therefor as therein provided.

Original
jurisdiction,
with the
Supreme
Judicial Court
and Municipal
Court of
Lewiston.

IV. Original jurisdiction concurrent with the supreme judicial court and the municipal court of the city of Lewiston of all civil actions in which the debt or damages demanded, exceed twenty dollars but do not exceed three hundred dollars

and the defendant resides within the county of Androscoggin; provided, however, that any action wherein the debt or damage demanded exceeds twenty dollars, brought in said court, shall be removed by order of the judge into the supreme judicial court, on motion of the defendant, filed at the return term, if he files therewith, at the same time an affidavit that he believes he has a good defense to said action, in whole or in part, and in good faith intends to make such defense, and deposits with the clerk, the fee of the clerk of the court above for entering said action therein; and when such removal has been ordered, the clerk shall file in the supreme judicial court at its next term in the county, an attested copy of the writ in such action and of said motion and affidavit, and order of court thereon and pay to the clerk of said court the fee for entering the same, for which services he shall be entitled to the same fees allowed for the necessary copies in actions carried up by appeal, to be paid to him by the defendant and recovered by him with his costs, if he prevail in the suit.

‘SECT. 3. Nothing in the foregoing section shall be construed to give said court any authority exceeding that of trial justices to hear and determine any civil action in which the title to real estate, according to the pleadings or brief statement filed therein by either party, is in question, but all such actions brought therein shall be removed to the supreme judicial court in the county, or otherwise disposed of as provided in section four of chapter eighty-three of the revised statutes.

—jurisdiction shall not exceed that of trial justices, when title to real estate is involved.

‘SECT. 4. The clerk of said court shall be a citizen of said Auburn and a member of the bar of the county of Androscoggin, and shall be appointed by the governor, by and with the advice and consent of the council, for a term of four years: and he shall be sworn, and give bond to the county as required by law. In case of the absence of said clerk from court, or should a vacancy occur in the office of clerk, the judge may appoint a clerk, pro tempore, who shall be sworn by said judge, and act during such absence, or until such vacancy be filled.

Qualification, appointment and tenure of clerk.

—clerk, pro tem.

‘SECT. 5. It shall be the duty of said clerk to attend the sessions of said court held for civil business and during all criminal proceedings before it, and keep a record of its doings; and he may administer oaths and affirmations, and shall have all such other powers and perform all such other

Duties of clerk.

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duties, relative to proceedings in said court, in all matters, civil or criminal, within its jurisdiction, as clerks of the supreme judicial court have and perform relative to like proceedings in that court. He may receive criminal complaints and accusations in bastardy and issue warrants thereon, to be returned before said court and shall make and sign all subpoenas and all processes of commitment issued thereby, but any such warrant or other precept signed and issued by the judge shall be equally valid. Should the judge of said court be absent, or should a vacancy occur in the office of judge thereof, said clerk, during such absence or vacancy, shall have all the powers and discharge all the duties of said judge in relation to the criminal business of said court.

Powers of the court.

‘SECT. 6. Said court shall have authority to administer all necessary oaths or affirmations; to hear and determine civil causes before it, and to render judgment therein, and issue execution upon the same, such execution, except when otherwise provided by law to have the same force and be satisfied in the same manner as if issued by the supreme judicial court; to compel the attendance of witnesses, and punish persons duly summoned as witnesses, if they refuse or neglect to attend; to make and enforce such rules and regulations not repugnant to law, as may be necessary therein for the prompt administration of justice; and all the provisions of law relating to proceedings and practice in the supreme judicial court, and to the attachment of real or personal estate, the taxation of costs, the rendition of judgments and the issuing, service, satisfaction and return of executions shall be extended to and apply to said municipal court and to proceedings therein, except so far as such application may be modified by the provisions of this act.

Writs and processes, form and service.

‘SECT. 7. Writs in civil actions commenced in said court shall be in the usual forms and all such writs and all other precepts and processes, civil or criminal, issued by said court, shall bear teste of the judge under seal of said court, and be signed by the judge or by the clerk, and be of equal validity when signed by either. All such writs shall be made returnable at one of the next two terms of said court held after seven days from their date, and service thereof may be made at any time not less than seven days before the return day thereof, except that when any defendant or trustee named in any such writ is a corporation, service upon such corporation

—writs.

must be made at least thirty days before the return day. In a prosecution in said court for an offense against any ordinance of the city of Auburn, it shall not be necessary to recite such ordinance in the complaint, or to set out the offense more particularly than in a prosecution for an offense against a public statute.

‘SECT. 8. Said court shall be held on the fourth Tuesday of every month, except August, for the entry, trial and determination of civil actions of all kinds that may lawfully be brought before it, and for the transaction of other civil business, and upon each other Tuesday of the same months for the entry, trial and determination of actions of forcible entry and detainer only, at ten o’clock in the forenoon, at such suitable place within the city of Auburn as said city shall provide. When held for civil business it may be adjourned from time to time by the judge, but it shall be considered as at all times in session for the cognizance of criminal actions.

‘SECT. 9. Should the judge be prevented by any cause from attending at the time designated in the foregoing section for holding a monthly or other civil term of said court, the clerk shall enter all actions then returnable, and all pleas, motions, disclosures, accounts in set off and other papers then filed, and adjourn the court to a day certain, not beyond the third day thereafter. On that day, if the judge is still absent, the clerk shall, by public proclamation, adjourn the court without day; but shall first record default and enter up judgment in all actions of the term not answered to by the defendants, except trustee actions, and in all trustee actions not answered to by the defendants, or by the trustees therein named and summoned, and also, by consent of the parties in any continued action cognizable at such term, and shall continue all other actions: provided, that all continuances of actions of forcible entry and detainer, in said court whether by the clerk, as above provided, or by order of the judge when present, shall be only to the next term, weekly or monthly, at which such actions are cognizable. In case a vacancy should occur in the office of the judge, any civil term of said court occurring during such vacancy, shall be adjourned by the clerk from time to time not more than three days at any one time, without transacting any other business and

Terms.

—adjourned.

When judge is prevented attending, clerk may adjourn the court.

—proceedings.

—in case of vacancy, clerk may adjourn from time to time.

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without detriment to any action or proceeding pending therein until such vacancy is filled.

Entry of actions and proceedings.

‘SECT. 10. All actions in said court shall be entered on the first day of the term at which they are made returnable and not afterwards, except by special permission. When a defendant legally served fails to appear during the first two days of the return term, he may be defaulted and the charge in the declaration taken to be true; but if he afterwards appear during the term, the court may permit the default to be taken off. Pleas in abatement must be filed on or before the second day of the term, and shall be heard and determined during the term if either party so desire.

Actions of forcible entry and detainer, proceedings in cases of.

‘SECT. 11. In actions of forcible entry and detainer brought in said court, the defendant's pleading in bar shall be the general issue with a brief statement of any special matters of defense, and must be filed within the first two days of the return term, or the defendant shall be defaulted, unless the court enlarge the time, for which it may impose terms. In any other actions therein the pleadings in bar may be the same as required in the supreme judicial court, and must be filed on or before the second day of the next monthly term after entry, or the defendant shall be defaulted, unless the plaintiff consents to an extension of the time or the court for good cause, with or without terms at its discretion, allows such extension. All actions of forcible entry and detainer, and any other action in which either party shall have given written notice to the adverse party ten days before the return day that he desires a trial at the first term, shall be in order for trial at the return term, and so remain until tried or otherwise finally disposed of, unless continued by consent, or on motion of either party for good cause, in which latter case the court may impose reasonable terms, but all other actions not defaulted or otherwise finally disposed of, shall be continued as of course, and be in order for trial at the next term.

Appeals, may be taken to the Supreme Judicial Court.

‘SECT. 12. Any party may appeal from a judgment or sentence of said court to the supreme judicial court, in the same manner and subject to the same conditions as from a judgment or sentence of a trial justice.

Costs and fees, allowed to parties, attorneys and witnesses.

‘SECT. 13. The costs and fees allowed to parties, attorneys and witnesses in all civil actions in said court, in which the debt or damages recovered does not exceed twenty dollars

including actions of forcible entry and detainer, shall be the same allowed by trial justices in like actions before them, except that the plaintiff, if he prevail, shall be allowed two dollars for his writ, and the defendant, if he prevail, two dollars for his pleadings, but in actions in which the amount recovered exceeds twenty dollars, the costs and fees shall be the same as allowed in the supreme judicial court, in like actions, except that the defendant, if he prevail, shall be allowed two dollars for his pleadings, and that witnesses shall be allowed one dollar per day, and travel as in other cases.

‘SECT. 14. No fees shall be allowed or taxed for said judge in any civil action or proceeding in said court; and none shall be taxed for him in any criminal action or proceeding therein for any service, the fee for which is to be allowed the clerk, as provided in section fifteen, but for any other services in criminal matters, the same fees shall be allowed for him and at the same rates as are allowed by law to trial justices for like services, except that his fee for a complaint and warrant shall be one dollar, and for the trial of a complaint or of a libel of intoxicating liquors, two dollars for the first day and one dollar for every additional day engaged therein, all of which fees shall inure to the city of Auburn and be paid to the treasurer of said city, whose receipt shall be a sufficient voucher for such payment.

Fees, which judges may be allowed to tax.

‘SECT. 15. The clerk of said court may tax and shall be allowed for his services in a civil action the same fees, the trial fee excepted, allowed by law to trial justices, for like services, and at the same rates, except that he shall be entitled to sixty cents for entering and recording an action and twenty-five cents for taxing the costs, said fees to be paid him by the party at whose instance the services were performed, and taxed with the costs of such party if he prevail in the suit. For his services in criminal proceedings he shall be entitled to forty cents for taxing the costs and recording judgment, ten cents for each subpoena, twenty-five cents for each mittimus and each recognizance, fifty cents for making and recording each libel of intoxicating liquors, and twenty-five cents for each order to destroy or to restore such liquors, said fees to be taxed in the bills of costs, and unless paid into court, to be allowed by the county commissioners, and paid by the county treasurer, as provided by law in relation to other criminal expenses.

Fees, which clerk may be allowed to tax and receive.

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Fees, which clerk may retain.

SECT. 16. The clerk shall receive all fines, forfeitures and costs paid into court in criminal proceedings, and may retain from such costs his own fees, but shall pay over all other fees to the persons to whom they were allowed when called for, if called for within one year, except the fees of the judge, which he shall account for and pay over to the treasurer of the city of Auburn at the end of every three months. All fines and forfeitures received by him, and all fees so received but not seasonably called for, he shall account for and pay over at the time and in the manner required by law, but no account required by this section shall be deemed sufficient unless approved and signed by the judge.

—fines, shall be accounted for.

City, shall provide a court room.

SECT. 17. It shall be the duty of the city of Auburn to provide a suitable courtroom, conveniently situated and appropriately fitted up and furnished, in which to hold said court, and keep the same in proper condition for use, and also to provide for said court an appropriate seal, and all blanks, blank books, dockets, stationery and other things necessary in the transaction of its business; and said city shall have authority to raise money for that purpose and for the payment of the salary of the judge.

Trial justices, restricted from exercising jurisdiction in city of Auburn.

SECT. 18. Trial justices are hereby restricted from exercising any jurisdiction in the city of Auburn over any matter or thing, civil or criminal, except such as are within the jurisdiction of justices of the peace and quorum and except that they may issue warrants on complaints for criminal offenses, to be returned before said municipal court.

When act shall take effect.

SECT. 2. This act shall take effect when approved so far as to authorize the appointment of a clerk of said court as provided therein, and shall be in full effect on and after the fourth Monday in March in the year eighteen hundred and ninety-one, provided, that nothing therein shall be held to restrict or enlarge the powers of the judge in relation to any proceedings pending in said court at the time when said act goes into effect, or in relation to any writ or other process then already issued and served.

Inconsistent acts, repealed.

SECT. 3. All acts and parts of acts inconsistent with this act, are hereby repealed.