

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

TITLE EIGHTH.

Of judicial courts and courts of county commissioners; their general jurisdiction and the officers therewith connected.

- CHAPTER 96. Of the supreme judicial court and its jurisdiction; and the reporter of its decisions.
97. Of district courts and their jurisdiction.
 98. Of the municipal and police courts in this state.
 99. Of county commissioners.
 100. Of clerks of the judicial courts.
 101. Of the attorney general and his duties.
 102. Of county attorneys.
 103. Of attorneys at law.
 104. Of the powers and duties of sheriffs, deputy sheriffs, jailers, constables, and of coroners in civil actions.

CHAPTER 96.

OF THE SUPREME JUDICIAL COURT AND ITS JURISDICTION; AND OF THE REPORTER OF ITS DECISIONS.

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| <p>SECT. 1. Organization of the court.</p> <p>2. Powers, in civil actions.</p> <p>3. Its criminal jurisdiction.</p> <p>4. General supervision of other courts.</p> <p>5. Power to issue special writs, for the furtherance of justice.</p> <p>6. Conservators of the peace. Certain incidental powers.</p> <p>7. Common law jurisdiction.</p> <p>8. Certain essentials in all writs and processes.</p> <p>9. Court may establish rules.</p> <p>10. Its chancery jurisdiction. Forms of original process.</p> <p>11. When writs of injunction may issue.</p> <p>12. Of the law terms of the court.</p> <p>13. Of terms for jury trials. Further powers, if a majority be present.</p> <p>14. Powers of a single justice, at a law term.</p> <p>15. Of adjournments by the sheriff, or clerk, in the absence of the court. All actions continued.</p> <p>16. Jurisdiction concurrent with the district court in certain cases, and appellate, in the same cases.</p> <p>17. Of exceptions by a party to the opinion of a single justice.</p> <p>18. After exceptions, or dilatory plea over ruled, trial to proceed to verdict. Action then to be continued to the law term.</p> <p>19. Proceedings thereon, at such term.</p> | <p>SECT. 20. Court may allow interest on verdicts.</p> <p>21. Provision, when the judge deems exceptions to be frivolous.</p> <p>22. Matters cognizable by the court, held by two or more justices.</p> <p>23. In certain cases, one justice may decide law questions.</p> <p>24. May enter judgment in cases, continued for advisement.</p> <p>25. Powers of a single judge, after the decision of questions of law, at the law term.</p> <p>26. Of entry of judgment in actions continued nisi.</p> <p>27. Mode of such entry. Attachments preserved.</p> <p>28. Courts to be held, with a view to the completion of business in the several counties.</p> <p>29. Supreme judicial court, the supreme court of probate.</p> <p>30. To examine the records of registers of probate.</p> <p>31. Mode of describing the time of holding courts.</p> <p>32. Office of reporter.</p> <p>33. His appointment, and tenure of office.</p> <p>34. His duties.</p> <p>35. Times and places of holding the law terms of the supreme judicial court.</p> <p>36. Times and places of holding nisi prius terms.</p> |
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- SECTION 1.** The supreme judicial court shall consist of a chief justice and two associate justices; each of whom shall be an inhabitant of this state, of sobriety of manners, and learned in the law, appointed and commissioned as prescribed in the constitution. **CHAP. 96.**
Organization of the court. 1820, 54, § 1.
- SECT. 2.** They, or a majority of them, shall have cognizance of pleas real, personal and mixed, and of all civil actions between party and party, and between the state and any of the citizens thereof, or other persons resident within it, which may be legally brought before them, by original writ, writ of error, or otherwise; and may render judgment and award execution thereon, as is or may be provided by law. Powers, in civil actions. 1820, 54, § 1.
- SECT. 3.** They shall have cognizance of all capital crimes and all other offences and misdemeanors, which shall be legally prosecuted before them. Its criminal jurisdiction. 1820, 54, § 1.
- SECT. 4.** They shall have the general superintendence of all courts of inferior jurisdiction for the prevention and correction of errors and abuses, where the laws have not expressly provided any remedy. General supervision of other courts. 1820, 54, § 2.
- SECT. 5.** They shall have power to issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all other processes and writs, to courts of inferior jurisdiction, to corporations and individuals, which may be necessary for the furtherance of justice, and the due execution of the laws. Power to issue special writs, for the furtherance of justice. 1820, 54, § 2.
- SECT. 6.** The said justices shall be conservators of the peace throughout the state, and may punish, by fine and imprisonment, or either, at their reasonable discretion, all contempts committed against their authority; and may administer all necessary oaths in civil and criminal cases. Conservators of the peace. Of certain incidental powers. 1820, 54, § 1, 2.
- SECT. 7.** The said court may exercise jurisdiction, power and authority, agreeably to the common law of this state, not inconsistently with the constitution or any statute. Common law jurisdiction. 1820, 54, § 1.
- SECT. 8.** All writs and processes of the court shall be in the name of the state of Maine; bear teste of the first justice, who is not a party to, or interested in the suit; and shall be under the seal of the court, and signed by the clerk. Certain essentials in all writs and processes. 1820, 54, § 3.
- SECT. 9.** The court shall, from time to time, establish and record all such rules and regulations as may be necessary, respecting the modes of trial and the conduct of business, not being repugnant to law, whether in relation to suits at law or in equity. Court may establish rules. 1820, 54, § 4. 1821, 50, § 1. 3 Pick. 512.
- SECT. 10.** The said court shall also have power to hear and determine, as a court of equity, all cases of the kinds hereinafter mentioned, when the parties have not a plain and adequate remedy at law: that is,
- First.* All suits for the redemption or foreclosure of mortgaged estates;
- Second.* All cases of forfeitures of recognizances in criminal cases, and of forfeitures in all civil obligations or contracts;
- Third.* All cases of forfeiture of penalties to the state;
- Fourth.* All suits to compel the specific performance of contracts in writing, made since February tenth, one thousand eight hundred and eighteen;
- Fifth.* All cases of fraud, trust, accident or mistake;
- Its chancery jurisdiction. 1821, 39, § 2. 1821, 50, § 1, 2. 1830, 462, § 1. 1837, 301. 17 Mass. 303. 7 Greenl. 225. 3 Greenl. 320. 4 Pick. 1, 75, 78, 139, 234, 507. 6 Pick. 376. 10 Pick. 123. 11 Pick. 439. 13 Pick. 8. 22 Pick. 55, 231, 503, 526.

CHAP. 96.

Sixth. All cases of nuisance and waste ;

Seventh. All cases of partnership ;

Eighth. All suits or bills for discovery relating to any of the above mentioned cases, when a discovery may lawfully be required, according to the course of chancery proceedings ; and in all other cases, where equity powers are specially given to said court.

Forms of original process.

The bill or complaint in equity may be inserted in a writ of attachment or original summons, returnable to said court, and served on the adverse party like other writs or summonses in civil actions ; or the plaintiff may file his complaint with the court, and notice may be issued and served therein, as is, or may be provided by the rules of said court.

When writs of injunction may issue.
1830, 462, § 2.

SECT. 11. The court may issue writs of injunction in all cases of equity jurisdiction, when necessary to prevent injustice ; and any justice of said court may issue such writs, in such cases, to continue in force until the end of the then next term of said court, unless sooner dissolved ; but no such writ shall issue, without notice to the adverse party to appear and answer, unless the applicant shall file a bond with sufficient sureties, to respond all damages and costs.

Of the law terms of the court.
1823, 219, § 1.

SECT. 12. The supreme judicial court shall be annually holden by a majority of the justices thereof, in the several places, and on the several days, as mentioned in the thirty fifth section of this chapter.

Of terms for jury trials.
Further powers, if a majority be present.
1823, 219, § 2.

SECT. 13. The said court shall be annually holden by any one justice thereof, in the several places, and at the several times, mentioned in the thirty sixth section of this chapter ; and if a majority of the justices should be in attendance at such court, they may exercise all the powers, which they might exercise, and have cognizance of all matters, of which they would have cognizance, at a court holden by virtue of the preceding section.

Powers of a single justice, at a law term.
1823, 219, § 7.

SECT. 14. Whenever, at any court to be holden by a majority of the justices thereof, that number shall not be present, any one justice, attending, may proceed to the transaction of such business, as one justice of said court is, by this act, authorized to do.

Of adjournments by the sheriff, or clerk, in the absence of the court.
All actions continued.
1820, 54, § 7.
1823, 219, § 8.

SECT. 15. Whenever from sickness, accident, or any unforeseen cause, no justice of said court shall attend on the day for holding the court, pursuant to the twelfth or thirteenth section of this chapter, the sheriff of the county, or, in his absence, the clerk of said court shall, by oral proclamation in the court house, and by public notice, posted on the door thereof, adjourn the court from day to day, till a justice shall attend ; and, in case of necessity, may adjourn the court without day ; and, when such court shall be so adjourned, on account of the non attendance of any judge authorized to hold the same, all actions brought for such term may be entered by the clerk, and, with all continued actions on the docket, shall be continued to, and have day at the next term.

Jurisdiction concurrent with the district court in certain cases, and appellate, in the same cases.
1835, 165, § 1.
1839, 373, § 4, 6.

SECT. 16. The supreme judicial court shall have concurrent jurisdiction with the district court in all civil actions, in which the debt or damage demanded exceeds the sum of two hundred dollars ; and in actions of replevin, trespass on lands, real actions, actions by or against towns and plantations, and writs of dower ; and also

appellate jurisdiction in such cases, subject to the provisions of the fifteenth section of chapter ninety seven.

SECT. 17. When the court is holden by any one of the justices thereof, any party thinking himself aggrieved by any opinion, direction or judgment of said justice, in any action or process, civil or criminal, may, at the same term, allege exceptions to the same; and such exceptions shall be reduced to writing in a summary manner, and signed by the party or his counsel excepting, and presented to the court before adjournment without day; and, if found true in fact, shall be allowed and signed by the justice, who tried the cause.

Of exceptions by a party, to the opinion of a single justice. 1823, 219, § 4.

SECT. 18. Notwithstanding such exceptions, or any dilatory plea, overruled by the presiding justice, during the trial, the proceedings before the jury shall not be stayed, but, after the trial has been closed, and a verdict returned, the action shall be continued to the next court to be holden pursuant to the twelfth section of this chapter, for decision on the exceptions allowed, subject to the provisions of the twenty first section.

After exceptions, or a dilatory plea overruled, trial to proceed to verdict. Action then to be continued to the law term. 1823, 219, § 4.

SECT. 19. The court, to which any action may be continued on exceptions, as aforesaid, or upon a report of the presiding judge in any trial, or upon a statement of facts agreed upon and signed in such court, or signed in the district court, and brought by appeal before the supreme judicial court for final decision, shall have cognizance thereof, and do therein what to law and justice appertain.

Proceedings thereon, at such term. 1823, 219, § 4.

SECT. 20. The court may allow interest on the damages given in the action, from the time the verdict was returned, to the time of rendering judgment thereon.

Court may allow interest on verdicts. 1823, 219, § 4.

SECT. 21. The justice, who may allow and sign exceptions as aforesaid, may, if he deem them frivolous, or intended for delay, impose such terms and conditions on the party making them, as he may judge reasonable; and, if not accepted, may enter judgment on the verdict, subject to exception, revision and correction as aforesaid by the full court.

Provision, when the judge deems exceptions to be frivolous. 1823, 219, § 4.

SECT. 22. Indictments in capital cases, and all motions for new trials and petitions for review; all appeals from the decrees of the judge of probate, except such as shall be tried by jury; questions of law, arising on special verdicts, and facts agreed or reserved, as stated in the nineteenth section; and all questions on demurrer, shall be heard and determined by the court, holden pursuant to the twelfth section; subject, however, to the provision contained in the thirteenth section.

Matters cognizable by the court, held by two or more justices. 1823, 219, § 5.

SECT. 23. In all cases, where any two of the justices of said court have been of counsel for either party, or are otherwise interested in such actions, one justice, who is not disqualified as aforesaid, shall have the like power to hear and decide all questions and matters of law, mentioned in the preceding section; and all actions, processes and matters, other than those mentioned in this and the preceding sections, may be heard and determined by any one justice of said court, holding the same pursuant to the thirteenth section of this chapter.

In certain cases, one justice may decide law questions. 1821, 56. 1823, 219, § 5.

SECT. 24. At any such court, judgments may be entered in those cases, which have been continued for advisement or other reason from a preceding term.

May enter judgment in cases, continued for advisement. 1823, 219, § 5.

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Powers of a single judge after the decision of questions of law, at the law terms.

1823, 219, § 7.
Of entry of judgment in actions continued nisi.
1820, 54, § 8.

Mode of such entry. Attachments preserved.
1820, 54, § 8.

Courts to be held, with a view to the completion of business in the several counties.

1823, 219, § 8.

Supreme judicial court, the supreme court of probate.

1821, 51, § 6.
4 Pick. 129.

To examine the records of registers of probate.

1826, 343, § 6.

Mode of describing the time of holding courts.

1820, 54, § 5.

Office of reporter.
1820, 54, § 9.

His appointment, and tenure of office.
1820, 54, § 9.

His duties.
1820, 54, § 9.

Times and places of holding the law terms of the supreme judicial court.
Cumberland.

SECT. 25. Any one of the justices of said court, when holden pursuant to the twelfth section of this chapter, may hear and try any causes, cognizable by one justice of said court, after the questions of law have been decided.

SECT. 26. When, at any term of said court, an action has been, or shall be continued nisi, for argument upon questions of law, by consent of parties, or for advisement by the court, or for acceptance of a report of referees, in the same or in any other county by consent, or for any other cause, it shall be lawful for the court to pronounce their decision, at any term and in any county, and judgment may be entered in such action in the county, where the cause is pending, by special order of court, as of the preceding term.

SECT. 27. In such case, the clerk of said court shall enter the judgment, according to such order, and also the day on which the same was entered; and all liens, created by attachment on mesne process, and then in force, shall continue to be in force, for and during thirty days after the then next term of said court.

SECT. 28. It shall be the duty of the court, from time to time, to make all necessary arrangements for holding said court, pursuant to said thirteenth section of this chapter, so as to enable them to complete all the business pending in the several counties.

SECT. 29. The supreme judicial court shall be the supreme court of probate, and shall have appellate jurisdiction of all matters determinable by judges of probate in their respective counties.

SECT. 30. The justices of the supreme court of probate shall examine, or cause to be examined, the records of the registers of probate in the several counties; and, if they are found deficient, shall give notice thereof to the treasurer of the county, in which such deficient register resides, that his official bond may be put in suit.

SECT. 31. In all writs, processes and judicial proceeding[s], civil and criminal, the day on which any term is to commence, may be designated, as the first, second or other Tuesday, (as the case may be) of the month in which the same shall happen.

SECT. 32. The reporter of decisions of the supreme judicial court shall continue in office, according to the tenor of his appointment.

SECT. 33. Whenever there shall be a vacancy in said office, it shall be the duty of the governor, with advice of the council, to appoint some suitable person, learned in the law, to be a reporter of the decisions of said court, who shall be duly sworn, and removable at the pleasure of the executive.

SECT. 34. It shall be his duty, personally, to attend at each law term of the court, to obtain true and authentic reports of such decisions, as may be hereafter made; and when he is not present at any term, he shall, by other means, obtain such decisions; and shall publish the same, when they will comprise a suitable volume.

SECT. 35. Pursuant to the provision contained in the twelfth section of this chapter, the court shall be holden at the several places and times as follows:

In and for the county of Cumberland, at Portland, on the Tuesday, next but one, preceding the last Tuesday of April;

In and for the county of York, at Alfred, on the last Tuesday of April: CHAP. 96.
York.

In and for the county of Oxford, at Paris, on the third Tuesday of May; Oxford.

In and for the county of Lincoln, at Wiscasset, on the fourth Monday in May; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday, next after the fourth Tuesday of May; Kennebec.

In and for the county of Franklin, at Farmington, on the second Tuesday, next after the fourth Tuesday of May; Franklin.

In and for the county of Somerset, at Norridgewock, on the third Tuesday, next after the fourth Tuesday of May; Somerset.

In and for the county of Piscataquis, at Dover, on the fourth Tuesday, next after the fourth Tuesday of May; Piscataquis.

In and for the county of Penobscot, at Bangor, on the fifth Tuesday, next after the fourth Tuesday of May; Penobscot.

In and for the county of Washington, at Machias, on the sixth Tuesday, next after the fourth Tuesday of May; Washington.

In and for the county of Hancock, at Ellsworth, on the seventh Tuesday, next after the fourth Tuesday of May; Hancock.

In and for the county of Waldo, at Belfast, on the eighth Tuesday, next after the fourth Tuesday of May. Waldo.

SECT. 36. Pursuant to the provision, contained in the thirteenth section of this chapter, the court shall be holden at the several places and times, as follows: Times and places of holding nisi prius terms.

In and for the county of Cumberland, at Portland, on the second Tuesday of November; Cumberland.

In and for the county of York, at Alfred; on the third Tuesday of September; York.

In and for the county of Oxford, at Paris, on the second Tuesday of October; Oxford.

In and for the county of Lincoln, at Wiscasset, on Wednesday next after the second Tuesday of September; Lincoln.

In and for the county of Kennebec, at Augusta, on the first Tuesday of October; Kennebec.

In and for the county of Somerset, at Norridgewock, on the last Tuesday of September; Somerset.

In and for the county of Penobscot, at Bangor, on the fourth Tuesday of October; Penobscot.

In and for the county of Waldo, at Belfast, on the second Tuesday of December. Waldo.

CHAPTER 97.

OF DISTRICT COURTS, AND THEIR JURISDICTION.

SECT. 1. District courts continued. Three districts.
 2. Western district.

SECT. 3. Middle.
 4. Eastern.

**The following page(s) from
“An Act to Amend the Revised Statutes”
include amendments to this chapter.**

Right of redemption, where real estate of banks or manufacturing corporations has been sold on execution. 1838, 332, § 1, 2.

And such corporation shall have the right to redeem any lands, and, if mortgaged; the debts secured thereby, sold by virtue of the provisions of this section, within the time and in like manner, and with like remedies to compel a reconveyance, as are provided in the forty first and forty second sections; and such right of redeeming shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; reserving to the corporation the same right of redeeming from the purchaser at said second sale.

The same chapter shall be further amended, by inserting, at the end thereof, a new section, as follows:

Right, by contract, to a deed of real estate may be sold on execution. Right of redemption of certain interests in real estate. Such right of redemption may be sold on execution. 1829, 431, § 1, 2. 1833, 87.

SECT. 50. All the right and title, to a conveyance of real estate, by virtue of a bond or contract which any debtor may have, may be taken and sold on execution, in the manner prescribed in the thirty sixth and four following sections; and any such right, so sold, and also any right, title and interest, which any person owns, in virtue of a possession and improvement, having been sold on execution, as provided in the said thirty sixth and four following sections, may be redeemed from the purchaser, or person holding under him, by like proceedings, on the same conditions, and with the same remedies to compel a reconveyance thereof, as are provided in the forty first and forty second sections; and this right to redeem from the purchaser shall be liable to attachment on mesne process, and seizure and sale on execution, as provided in the forty third section, for the attachment and sale of the right of redeeming an equity of redemption; and, in all cases, where a right to redeem from a former sale or levy has been sold on execution, the debtor shall have the same right of redeeming it, as is allowed upon the first sale of rights in equity of redeeming mortgaged real estate.

R. S. ch. 96.

SECTION 11. The ninety sixth chapter shall be amended in the seventh section, by inserting, at the close thereof, the following:

Supreme judicial court to control the records and documents of the supreme judicial court of Massachusetts, now remaining in this state. 1820, 54, § 1.

All records and documents of the supreme judicial court of Massachusetts, previous to the separation of Maine, now remaining in the several counties in this state, shall remain under the control and authority of the supreme judicial court of this state, in the same manner and for the same purposes, as the records and documents of their own doings; and the clerks of the same court shall have the like power in relation to the one, as the other of those records and documents.

R. S. ch. 97.

SECTION 12. The ninety seventh chapter shall be amended in the thirteenth section, by inserting, after the word "town," the following, "or in any libel for forfeited goods originally commenced in the district court"; so that the section, as amended, will be as follows:

Appeal in cases of libel for forfeited goods. 1821, 81, § 2.

SECT. 13. Any party, aggrieved at the judgment of any district court, on any demurrer or agreed statement of facts, or in any personal action, wherein issue in fact has been joined and a verdict given, in which the debt or damage demanded exceeds two hundred dollars, or in any action of replevin, or action of trespass on lands, writ of entry or of dower, or action against a town, or in any libel for forfeited goods, originally commenced in the said court,