

# MAINE STATE LEGISLATURE

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# DOCUMENTS

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# THE LEGISLATURE

OF THE

# STATE OF MAINE,

A. D. 1859.



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1859.

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# THIRTY-EIGHTH LEGISLATURE.

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HOUSE.]

[No. 17.

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FIFTY-NINE.

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AN ACT to establish a Court of Common Pleas.

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

SECTION 1. There shall be, and hereby is established a court of common pleas, which shall consist of a chief justice and three 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; and, as vacancies occur, they shall be filled in the manner provided by the constitution, so that there shall always be one chief justice, and three other justices of the said court.

SECT. 2. The justices of the said court shall establish a seal for the said court; and all writs and pro-

cesses issuing from the said court, shall be in the name of the State of Maine, shall be in the form now in use, shall bear the test of one of the justices of said court, shall be under the seal of said court, and signed by the clerk thereof in the county where the writ or process may be returnable ; and shall have force and be obeyed and executed throughout the State.

SECT. 3. Each of the justices of said court shall receive an annual salary of eighteen hundred dollars, which shall be paid to them out of the treasury of the State, in equal quarterly payments.

SECT. 4. The several clerks for the time being of the supreme judicial court, in the several counties, shall also be the clerks of the court of common pleas for said counties, and shall perform all the duties of clerks of said court of common pleas, and shall be entitled to receive for their services the same fees and compensation which now are, or hereafter may be allowed by law to the clerks of the supreme judicial court for similar services.

SECT. 5. The said court of common pleas shall have original and exclusive jurisdiction of all civil actions, in which the debt or damage demanded does not exceed two hundred dollars ; excepting actions in which municipal or police courts, or justices of the

6 peace have original jurisdiction, real actions and  
7 actions between towns. And shall have original and  
8 concurrent jurisdiction with the supreme judicial  
9 court in all the above named actions in which the  
10 debt or damage demanded exceeds two hundred  
11 dollars.

SECT. 6. The said court of common pleas shall  
2 have original and exclusive jurisdiction of all offences,  
3 crimes and misdemeanors, except murder, rape, bur-  
4 glary and arson, and those cognizable by municipal  
5 or police courts or justices of the peace.

SECT. 7. The said court of common pleas shall also  
2 have appellate jurisdiction of all civil actions, and of  
3 all crimes and offences, where an appeal may by law  
4 be made from the judgment or sentence of a justice  
5 of the peace, municipal or police court.

SECT. 8. The said court of common pleas is hereby  
2 fully authorized to administer all necessary oaths,  
3 render judgment, and award execution; make all  
4 such rules and regulations not repugnant to law, as  
5 may be necessary and proper for conducting the busi-  
6 ness of the court and administering justice promptly  
7 and without delay; and is hereby clothed with all  
8 the powers necessary for the performance of the duties  
9 imposed upon it by the laws of the State.

SECT. 9. Whenever it shall so happen that no

2 justice of said court shall attend at the time and place,  
3 at which said court by law, or by adjournment, ought  
4 to be held, the sheriff of the county may, by oral  
5 proclamation, adjourn the said court from day to day,  
6 until a justice shall attend.

SECT. 10. If in any action originally commenced  
2 in said court of common pleas, the plaintiff shall not  
3 recover more than twenty dollars debt or damage, he  
4 shall not be entitled to recover, for costs, more than  
5 one-quarter of the amount of the debt or damage so  
6 recovered; *provided, however*, that in actions between  
7 towns, full costs may be taxed for the prevailing  
8 party.

SECT. 11. There shall be no appeal from any  
2 judgment of the court of common pleas upon the  
3 verdict of a jury.

SECT. 12. The said court of common pleas, at any  
2 time before rendering judgment, may set aside the  
3 verdict, and grant a new trial of any action, for any  
4 cause, for which by law a new trial may be granted,  
5 or when in the opinion of the court, justice has not  
6 been done between the parties, on such terms and  
7 conditions as the court may think proper to impose.

SECT. 13. Any party aggrieved by any opinion,  
2 direction or judgment, of said court of common pleas  
3 in any matter of law, may allege exceptions thereto ;

4 which being reduced to writing in a summary mode  
5 and presented to the court before the adjournment  
6 thereof without day, and being found conformable to  
7 the truth, shall be allowed and signed by the presid-  
8 ing judge; but no trial before a jury shall be pre-  
9 vented or delayed by the alleging or allowance of such  
10 exceptions, but said trial shall proceed until a verdict  
11 is rendered.

SECT. 14. When the parties to an action agree upon  
2 a statement of facts for the purpose of having the  
3 questions of law arising thereon adjudicated by the  
4 supreme court sitting as a court of law, the presiding  
5 judge shall certify the same and the action shall be  
6 marked "law," and shall be continued and the like  
7 proceedings relative thereto shall be had as if the case  
8 were pending in the supreme court.

SECT. 15. The party alleging the exceptions shall  
2 enter the action in the supreme judicial court at the  
3 next law term thereof holden within and for the dis-  
4 trict embracing the county in which said action is  
5 pending, and produce all the papers in the cause;  
6 and said supreme judicial court shall have cognizance  
7 of the cause, and decide the questions of law raised  
8 therein, and render judgment, or grant a new trial at  
9 the bar of said court, and cause such other proceed-  
10 ings to be had as to law and justice shall appertain.

SECT. 16. If the party alleging the exceptions 2 shall fail to duly enter the action, and to produce the 3 papers required by law, the supreme judicial court 4 shall, upon the complaint of the adverse party, affirm 5 the former judgment, and increase the damages, if 6 any, by adding legal interest thereon, and award 7 double costs against the excepting party.

SECT. 17. Any person convicted of an offence in 2 the court of common pleas, thinking himself aggrieved 3 by any opinion, direction or judgment of the court in 4 any matter of law, may allege exceptions thereto, in 5 the manner provided in section thirteen; and the 6 person alleging the exceptions, shall recognize with 7 sureties, as the court shall direct, to produce the 8 necessary papers, and prosecute his exceptions before 9 the supreme judicial court, and abide the sentence 10 and order of said court, or, if the cause should be 11 remanded, of the court of common pleas; and the 12 supreme judicial court shall have cognizance thereof, 13 and may affirm the verdict in the court of common 14 pleas, or grant a new trial and enter judgment, or 15 remand the cause to the court of common pleas, as 16 justice may require. If he shall fail to enter and 17 prosecute his exceptions, the court may sentence him 18 to such punishment as the court of common pleas 19 might have inflicted, and issue all necessary process



20 therefor, or adjudge the recognizance forfeited, or  
21 both, as justice may require.

SECT. 18. Final judgments in the court of common  
2 pleas, either in civil actions, or in criminal cases, may  
3 be re-examined upon a writ of error, and reversed or  
4 affirmed in the supreme judicial court held within  
5 and for the district embracing the county where such  
6 judgment was rendered; and when the judgment in  
7 any civil action shall be reversed, the supreme judicial  
8 court shall render such judgment as the court of  
9 common pleas should have rendered.

SECT. 19. No stipulation or agreement, reserving  
2 the right to waive the pleadings or statement of the  
3 case in the court of common pleas, and plead anew  
4 in the supreme judicial court, shall be allowed; and  
5 no issue of law joined in the court of common pleas  
6 shall be waived by consent of parties after the entry  
7 of the action in the supreme judicial court.

SECT. 20. Grand and traverse jurors shall be drawn  
2 and returned in the manner provided by law, to serve  
3 at the terms of said court of common pleas; and the  
4 grand jurors so returned shall serve at every term of  
5 said court throughout the year.

SECT. 21. The several county attorneys shall be  
2 required to attend the several terms of the court of  
3 common pleas in their respective counties, and act for

4 the state and for such county in all cases in which  
5 the state or the county may be a party.

SECT. 22. All indictments shall be found and re-  
2 turned by the grand jurors attending the court of  
3 common pleas; and whenever an indictment shall be  
4 there found and returned for the crime of murder,  
5 rape, burglary or arson, if the person accused be not  
6 in custody, process shall be forthwith issued from the  
7 court of common pleas to arrest him, but the party  
8 charged shall not be arraigned nor tried in that court;  
9 but the original indictment shall be transmitted to  
10 the supreme judicial court at the next term thereof,  
11 holden in and for the county where said indictment  
12 was found, to be there heard, tried and determined, as  
13 if the said indictment had been found and returned in  
14 said supreme judicial court.

SECT. 23. The presiding justice shall hear and  
2 determine all causes whatsoever, without the inter-  
3 vention of a jury, when both parties shall have so  
4 agreed, and entered such agreement on the docket.

SECT. 24. The court of common pleas shall be held  
2 annually, by one of the justices thereof at the places  
3 and times hereinafter mentioned, that is to say,  
4 At Alfred, within and for the county of York, on  
5 the first Tuesday of January and second Tuesday of  
6 July.

- 7 At Portland, within and for the county of Cumber-  
8 land, on the first Tuesdays of March and September.
- 9 At Paris, within and for the county of Oxford, on  
10 the second Tuesdays of February and August.
- 11 At Farmington, within and for the county of Frank-  
12 lin, on the third Tuesday of April and fourth Tuesday  
13 of October.
- 14 At Auburn, within and for the county of Andros-  
15 coggin, on the first Tuesdays of April and October.
- 16 At Bath, within and for the county of Sagadahoc,  
17 on the second Tuesdays of April and November.
- 18 At Norridgewock, within and for the county of  
19 Somerset, on the fourth Tuesdays of March and  
20 September.
- 21 At Augusta, within and for the county of Kennebec,  
22 on the third Tuesday of January and first Tuesday of  
23 September.
- 24 At Wiscasset, within and for the county of Lincoln,  
25 on the first Tuesdays of March and October.
- 26 At Belfast, within and for the county of Waldo, on  
27 the fourth Tuesdays of April and October.
- 28 At Bangor, within and for the county of Penobscot,  
29 on the second Tuesdays of February and September.
- 30 At Machias, within and for the county of Washing-  
31 ton, on the first Tuesdays of January and August.

32 At Ellsworth, within and for the county of Hancock,  
33 on the third Tuesdays of April and November.

34 At Houlton, within and for the county of Aroostook,  
35 on the fourth Tuesdays of January and August.

36 At Dover, within and for the county of Piscataquis,  
37 on the first Tuesdays of May and November.

SECT. 25. Except so far as is inconsistent with the  
2 express provisions of this act, the said court of com-  
3 mon pleas shall have jurisdiction and cognizance of  
4 all matters that were cognizable by the late district  
5 court at the time it was abolished.

SECT. 26. This act shall take effect and be in force  
2 from and after the thirty-first day of May next; and  
3 all acts and parts of acts inconsistent with the pro-  
4 visions of this act, be, and the same are hereby repealed,  
5 from and after said thirty-first day of May; *provided*,  
6 *however*, that the repeal of said acts and parts of acts  
7 shall not in any way effect any suits, petitions, pro-  
8 ceedings, or prosecutions pending when this act shall  
9 take effect.

SECT. 27. All actions pending in the supreme judi-  
2 cial court, shall be entered at and have day in the  
3 court of common pleas; and at the first term of said  
4 court of common pleas held in any county after this  
5 act shall take effect, all actions of which by the terms  
6 of this act and of an act entitled "An act to modify

7 and limit the jurisdiction of the supreme court," passed  
8 in the year of our Lord one thousand eight hundred  
9 and fifty-nine, the supreme court has original juris-  
10 diction, shall on motion of either party thereto, be  
11 transferred to said court, and if not so transferred at  
12 said term shall be disposed of according to the terms  
13 of this act.

STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, March 7, 1859.

ORDERED, That 350 copies of this Bill be printed for the use of  
the Legislature.

GEO. W. WILCOX, *Clerk.*