

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

**A. D. 1834.**

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FOURTEENTH LEGISLATURE.

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NO. 46.

SENATE.

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STATE OF MAINE.

*In Senate, March 4, 1834.*

The Joint Select Committee to whom was referred an order instructing them to inquire into the expediency of repealing an Act passed June 28, 1820, establishing the duties to be paid by certain officers therein named, or that part of said Act which requires Justices of the Peace to pay five dollars for their Commission, have had the same under consideration and ask leave to submit the following Report :

That by the Act aforesaid, the following *duties* are paid into the Treasury by the respective officers hereinafter named, within sixty days after being qualified to act under such Commission, to wit :—  
By the Sheriffs of the Counties of York, Lincoln, Cumberland, and Kennebec, \$50 each ; by the

Sheriffs of the other Counties, \$25 each ; by the Clerks of the Counties of York, Cumberland, Lincoln, and Kennebec, \$40 each ; and by the Clerks of all other Counties in the State, \$25 each ; by each County Attorney, \$5 ; each Judge of Probate, \$7 ; each Register of Probate, \$10 ; each Justice of the Peace, \$5 ; each Coroner, \$3 ; and each Inspector General, \$20. By an Act of February 2d, 1825, it is provided, that all duties upon said officers shall be paid before the Commission shall issue.

By an Act of March 9th, 1831, each Register of Deeds is required to demand for every deed recorded, a *duty* of 17 cents to be paid into the Treasury of the County. By an Act of March 4th, 1826, the foregoing Acts are repealed so far as they relate to *Coroners*.

From 1821 to 1833, inclusive, the sum of *nineteen thousand four hundred and forty-nine dollars* has been received from these *duties*. Between six and seven thousand dollars of this sum is derived from the duties paid on the Commissions of Justices of the Peace alone.

This *tax* upon *offices*, for it must be regarded as such, is *unequal in its operation*, and is paid ultimately by that class of the community least able to bear more than a just proportion of the public burdens.

If the fees of the Sheriffs, the Clerks, the Registers of Probate, or Registers of Deeds, are *too high*, they should be diminished, *not by the pay-*

*ment of duties*, but by a *reduction that would relieve those from whom the fees are taken*. The *duties* paid by the Sheriffs, the Clerks, &c. are taken into account in fixing their fees, and consequently are included in and go to swell every bill of cost that is paid; thus a party in Court is forced to contribute an unequal proportion of the public revenue.

This is wrong *in principle*. Justice demands that no man or class of men, should be compelled to pay a higher proportional tax than another; and that the revenue of the Government should be raised upon a system of *perfect equality*.

The same remarks apply to the Register of Deeds, and the same objection of unequal taxation.

In regard to the *duties on Justices Commissions* there is a further objection founded in principle. Let us go back to *first principles*. It is the duty of the Executive to make appointments *when the public good* requires them, and to see that none are made when not demanded by the public good. If then *it is required* that a particular appointment should be made, what propriety is there in levying a tax upon the officer? *If not thus required*, what propriety is there in making it; merely to secure the revenue derived from the tax?

This is, moreover, something like the appearance of a *sale of offices*, and the practice opens an avenue into which abuses have, in other Governments, found entrance. Is *revenue the object*, and is it consistent with sound policy thus to secure it? then

surely the *greater* the amount which can be raised, the more perfectly is the object attained. Why then, we ask, may we not, with the same propriety, and in perfect keeping with the present system, prepare a list of candidates, like the list of jurors in towns, and put up the Commissions *at auction*, and strike them off to the *highest bidder*? They would undoubtedly bring much more than they do, and thus the ends of the present system would be better secured, if offices are to be regarded as public property to be sold out *for the purposes of revenue*, then, surely, it is right to dispose of them, as of other public property, *in open market*; and thus the Executive might be relieved from responsibility in making the appointments.

The present system, so far from relieving the executive from this responsibility, and preventing a multiplicity of applications, (as is sometimes contended,) increases both: experience shows this to be the fact, and now it seems to be the common feeling that *any man* who can raise, and is willing to pay five dollars, has a right to a commission.

It is not required of the Legislature to assume any part of the responsibility of any other department of the Government; and sure we are, that the Executive is fully competent for the discharge of all his constitutional duties. The tax too is unequal, as it regards the Justices themselves. To some, the commission is valuable to the officer personally; while to others, it is only a burden assum-

ed for public convenience. And if the new system for increasing the jurisdiction of Justices should go into operation, this inequality will be increased; and it will surely then be requisite, (if the duty system is continued,) to provide for the sale at auction, and give every bidder a fair chance for a commission.

The attention of the Committee has also been attracted to another *duty* now required by law, which appears to be equally unnecessary and unjust. By an act passed February 2, 1822, no person can be admitted as an Attorney in the Court of Common Pleas, in any County in this State, until he has paid twenty dollars to the Treasurer of said County; nor in the Supreme Judicial Court, until he has paid thirty dollars more. So far as this duty goes to benefit the members of the bar and is paid over to the Law Library Association to be expended for books &c., it may not be open to serious objection. But the *duty of thirty dollars*, now paid by every person admitted as an Attorney of the Supreme Judicial Court, goes entirely for the use of the State, and is paid over to the Treasurer of the State by the Treasurers of the several Counties.

The amount so paid for the use of the State, since the passage of the law aforesaid, is probably about *six thousand five hundred dollars*.

This sum added to the \$19,449 00, would swell the sum to \$25,949 00, which has been collected and paid into the Treasury from these *duties*.

The principal part of this sum, it will be seen by a close examination into the manner of its collection, is paid by that class of community, who from necessity, misfortune, or otherwise, are forced to defend suits at law, or by those least able to bear it.

The Committee, having carefully examined the subject, and having come to the conclusion, that the present system of raising a *revenue* for the support of government by duties on the commissions of Officers, *necessary to be appointed* for the common benefit and convenience of all the people, is unsound in principle, and tends in practice to weaken the confidence of the people in the justice and integrity of the government; and believing also, that laws authorizing, or acquiring, such *duties* are an indirect and unequal system of taxation, and ought to be repealed.

They, therefore, have directed me to report a bill which is herewith submitted.

**JABEZ BRADBURY, *Chairman.***



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## STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED  
AND THIRTY-FOUR.

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**AN ACT** to repeal “ An Act establishing the duties to be paid by certain officers therein named,” also, “ An Act establishing the duties to be paid by Attornies.”

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*Be it enacted by the Senate and House of  
2 Representatives in Legislature assembled,  
3 That an Act entitled “ An Act establishing the  
4 duties to be paid by certain officers therein  
5 named,” passed June twenty-eighth, one thousand  
6 and eight hundred and twenty; and an Act en-  
7 titled “ An Act establishing the duties to be  
8 paid by Attornies,” passed February second,  
9 one thousand eight hundred and twenty-two, be  
0 and the same are hereby repealed.*

STATE OF MAINE.

IN SENATE, March 4, 1834.

ORDERED, That three hundred copies of the foregoing Report  
and Bill be printed for the use of the Legislature.

[Extract from the Journal.]

Attest,            WILLIAM TRAFTON, *Secretary.*