

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

**A. D. 1838.**

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# EIGHTEENTH LEGISLATURE.

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No. 6.

HOUSE.

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## PETITION

Of James Hawes, and 79 others, that the Court of  
Common Pleas may be abolished.

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*To the Honorable the Senate and House of Represen-  
tatives in Legislature Assembled,*

Respectfully represent, that we are laboring under many and serious inconveniences, from the present organization of our Judiciary system—believing as we do, that government is instituted, having for its object the greatest good of the greatest possible number, which is the whole, we would ask your candid deliberation upon the subject of abolishing the Court of Common Pleas, and providing means for obtaining ample justice far more expeditiously, and at far less expense than we do under the present system, deeming it our duty as well as privilege to solicit the attention of your honorable body to a redress of grievances, which have become ‘too grievous to be borne,’ and in doing this, we will respectfully state the evils by which we are afflicted, and the remedies which might be applied to heal them. In the first place we pray the Court of Com-

mon Pleas might be abolished, and for the following reason, viz: we view it as the greatest evil under which our country labors, and has caused more poverty and distress, by ten fold, than all the evils which politicians of both political parties have ascribed to the government, to the banking system, speculation, &c. It is a well known fact, that when a case is entered at the Common Pleas, it is a rare instance that judgment is obtained in a shorter time than two years. Our Court (in this County, Penobscot) generally sits from four to eight weeks, and our docket increasing at every succeeding term; people have to travel from forty to sixty miles, and be in attendance the whole term, with their witnesses, and then return without getting a trial—and if a person recovers, his expenses exceed his claim in almost all cases, unless his demand is a large one, and when judgment is obtained the suit is only in its first stage; the expenses attached to it render the parties desperate, and an appeal is generally made, and carried up to the Supreme Court, and our pockets are emptied by a *privileged Class* at the expense of the laboring and business part of the community. Under the present state of things, it is for the interest of every man, when he is sued for a sum not more than one hundred dollars, however unjust the demand, to settle it without delay, for it is a fair calculation that it will cost that sum to defend himself, and if he has a like sum due him, he had better give up the debt than commence a suit. The records of our Courts will show these facts in more *glaring* colors than we can present them, and were it not for intruding on your patience, we would state actual cases in corroboration of these

facts, but we will not impose on the good sense and information of your honorable body—but in the second place call your attention to the poor debtor law, and ask you candidly, if that also cannot be altered for the better, that when he is arrested and is going to disclose, to give him the privilege of notifying all his creditors to appear if they see fit, by publishing his intentions in one or more newspapers, printed in the County, and posting up notices in the town where he resides, and in two of the adjoining towns, twenty days previous to the time appointed, and show cause if any there be, why he should not be allowed to disclose. And when he has thus taken the oath, it shall exonerate him from all further suits, except in case he shall hereafter become possessed of property. The utility and the justice of such a law must be apparent to every one; if the person has secreted property, there is a much greater chance of his being detected, and if he has not, he should be set at liberty, for none of his creditors could be benefitted by any other suits. We know this to be the law in New Jersey, and we believe in some other of the sister States. It puts an end to numerous law suits which would otherwise occur, under the present existing law. If the poor man is owing ten, twenty, or more persons, the moment he is clear from one, another pursues the same course towards him, and the unfortunate man who is guilty of no crime but poverty is incarcerated in a prison for months, his family in a state of starvation, or thrust upon the town as paupers (which frequently occurs), to glut the vengeance of a merciless creditor. It is, must be acceded to by every generous, well-informed mind, that this state of things

is cruel, unjust, and contrary to every principle of reason and justice, and a state of things that cannot long continue.

As a substitute for the Court of Common Pleas, we ask you to candidly and deliberately consider of the following proposed remedy, viz: Let such towns at their annual meeting make choice of three or more judicious men, before whom all causes shall be tried the year ensuing, (if they are not acting parties, the Governor and Council to commission them) enlarge their jurisdiction to five hundred dollars in all civil causes, giving the parties a right of jury, of six discreet men of their own nomination, if they can agree, if not, let the Justice or Sheriff, as you in your wisdom shall think proper, and in no civil action or note of hand for either party to be allowed an appeal under two hundred dollars, and on accounts not under seventy-five dollars, and in all cases the appellant to recognise with good surety or sureties in a sufficient sum to pay the adverse party all cost that he shall be put at by such appellant, if he should not recover at the Supreme Court, more than was adjudged him at the first trial, excluding interest, in all actions to be brought, strict regard shall be had to making as little cost as possible, and in all cases the Court shall be held in the Town where one of the parties live, if in towns that are incorporated, or between their places of residence, so as not to enhance the travelling expenses. Either party wishing a jury, shall notify the justice, four days before the trial, and it shall be the right of the parties to challenge such jurors, in case they are connected or interested; and we ask you to place the fees of all offi-

cers, justices, jurors, sheriffs, also writs, executions, &c. at such a moderate rate that it shall not be for the interest of any one to stir up strife, or promote litigation.

We would respectfully invite your attention to that *foul stain* upon our statute books, called private attachment, and trust that the bare mention of the subject will be sufficient for you to wipe it off.

We would further invite your attention to enlarging the number of justices of the Supreme Court to five or seven as you shall think best, making three a quorum to decide all law cases, at the same time excluding all the said justices from being one of the board to decide law questions, from whom exceptions have been taken and carried to a full bench.

We find by looking into the pages of history, it has been the invariable practice of the most eminent jurists, legislators, statesmen, &c. of ancient and modern times, at their demise, to leave their estates out of the hands of the law, and that all disputes arising in the settlement, should be left to a reference of three persons. The mode we propose bears a great analogy to this. It brings our business home and among our own citizens, where every honest man can get justice done him, and every pest of society have his *measure meted out to him*. We are confident that this will meet your candid, serious and deliberate attention.

Some of these statements may appear at first sight to be exaggerated. But they are not. The subject calls loudly for legislative aid, and we look confidently to you for assistance. The jurisdiction of justices may appear to some to be too great, but we have a jury,

and besides another justice might be added when a cause is of importance or exceeds a certain sum. We believe we should have justice administered in a more equal and just manner, and at far less expense than it now is; and as Maine is not behind her sister States in enterprise, we hope that the shackles and fetters of the law may be knocked off and she be as noted and respected for her enlarged views, and benevolent feelings, as she now is for her *enterprise*.

In making this statement of our grievances, and in pointing out the remedies, we would not be understood to dictate, but pray for relief, in this, or some other way, which shall best remedy the evils of which we complain. And as in duty bound will ever pray.





STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 31, 1838. }

ORDERED, That the foregoing Petition lie on the table, and that  
one thousand copies be printed for the use of the Legislature.

(Extract from the Journal.)

GEORGE C. GETCHELL, CLERK.