MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

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1852.

THIRTY-FIRST LEGISLATURE.

No. 44.] [No. 33.--ADDITIONAL.] [HOUSE.

BANGOR, March 13, 1852.

THE undersigned, appointed as commissioners, by a "resolve in favor of re-organizing the judicial courts," herewith communicate a report and bills upon the subject matter submitted to their consideration.

By the resolve creating the commission, the undersigned were directed to publish the result of their deliberations in "the paper of the printer to the State," but not having agreed upon a report in season to comply with this direction before the session of the Legislature, we have deemed it our duty to submit the same directly to the body over which you have the honor to preside.

JOHN APPLETON,
GEORGE M. CHASE.

HON. GEO. P. SEWALL,
Speaker of the House of Representatives.

Wm. T. Johnson, Printer to the State.

REPORT

Of the Commissioners, appointed by virtue of "a resolve in favor of re-organizing the Judicial Courts."

THE undersigned have had the subject of the judicial system of this State under consideration, and herewith present a bill containing various proposed alterations, which they believe will, upon examination, recommend themselves to the sound judgment of the legislature.

Delay, vexation and expense, are evils incident to any administration of the law, however perfect it may be; and the diminution of those evils, so far as may be attainable, is the object to be sought after in any and all changes which may be proposed. Nor are these evils as affecting suitors alone to be regarded. The public has a deep interest in a wise and economical administration of the law. In the alterations, which we have recommended in our present system, we have been influenced by a desire to lessen the expenses of litigation, and to promote a more speedy termination of suits, and at a less expense to parties. Some of the changes proposed have heretofore been the subject of discussion, while others, which may be more novel, may require a more careful consideration. We propose, briefly, to allude to the several changes which will be found in the bills herewith presented, and to state the reasons which have induced us to propose them.

The first and most important change, is that by which the act establishing the district court is repealed, and its jurisdiction transferred to the supreme judicial court. The fewer courts, and the

more extensive and all-embracing their jurisdiction, the better. Two courts with concurrent jurisdiction are not upon principle defensible. Uniformity of decision is essential in judicial administration, and can best be promoted by unity of jurisdiction.

In civil cases, the final jurisdiction of the district court is exceedingly limited. It extends to appeals from justices, actions of assumpsit, debt, case or tort to person or personal property, when the damages claimed do not exceed two hundred dollars. In all cases, when the cause is not removable by appeal, exceptions may be taken to the decision of the district judge upon any question of law which may arise, and thus the cause may be carried to the supreme court, where, if the exceptions are sustained, the new trial is to be had. In actions to recover real estate, or of trespass or case for any injury thereto, suits between towns, or where a town is a party, replevin, and all actions, where the damages claimed exceed two hundred dollars, the district court has concurrent jurisdiction with the supreme judicial court; but this jurisdiction is not final, all these enumerated cases being removable by appeal from a judgment rendered upon a verdict or on demurrer. It is perceived, therefore, that in no instance is the jurisdiction of the district court necessarily final. No one, we apprehend, were this a new question, would for a moment think of creating a court with a jurisdiction so limited. The system of two courts, where in each case a trial by jury may be had, by means of an appeal from one to the other, is one which cannot be theoretically defended, and which in practice is utterly destitute of merit.

As a court for the collection of debts, the right of appeal existing in all cases where the amount claimed exceeds two hundred dollars, the district court, instead of facilitating their collection, obviously causes great delay to creditors, since the debtor, in all such cases, by appealing, gains a credit indefinite in its length. There is a large class of uncertain and unliquidated claims, where, while the amount claimed much exceeds that sum, the amount which may be recovered is uncertain, and being uncertain, no prudent attorney would commence a suit in the supreme court, lest in

case of recovering less, his client might suffer in costs. As the damages sued for are generally double, or at any rate, much exceed the amount due, the defendants have a right of appeal in all cases of any magnitude. The district court, therefore, affords no aid to the speedy collection of debts, but is rather a hindrance thereto.

In litigated causes, the uselessness of this court is still more apparent. All litigated causes may be brought before the supreme court by appeal or exceptions. Litigated causes are those in which the expense incurred by parties is at its height, and where delay is attended with the greatest inconvenience. If the expenses exceed the means of a party, or if they are indefinitely enhanced by delay, and parties are deterred from seeking to obtain their rights, it is a denial of justice—a denial of justice to the poor—the greatest practical reproach to any system of judicial administration, where such can ever be the result. All expenses, and all useless and avoidable delays, in proportion as they tend to this result, are an approximation to such denial. If they prevent the poor man from endeavoring to obtain what may be his due, then the law ceases to afford him protection, and the rights of wealth are alone secured. The increased expenses and delays of two courts, when the desired object can better be accomplished by one, is an unanswerable argument against the present system.

Now actions for the recovery of, or for injuries to real estate, suits of replevin, and between towns, are especially the cases where litigation is most likely to occur—they are in fact the staple of the litigation of the community—yet in all these cases irrespective of the damages claimed, if originally brought in the district court, an appeal may be taken, as well as when the damages exceed two hundred dollars. In all appealable cases, when the action is brought in the court below, the cause is continued some terms, and then removed by appeal from a verdict or sham demurrer to the supreme court. If there has been a trial and verdict rendered, the appeal vacates the judgment of the court below. Upon the entry of the appeal, the parties so far as regards the final result, are no nearer a decision by all which has been done, than if the suit

had been returnable to, and an original entry in the supreme court at the same term. The expenses of both parties, for any good that either may have received, might as well have never been incurred. If there had been but one court, and the cause had been tried by a jury, the same expense would have procured a verdict, which might have been final. In other instances, an action, after having been continued an indefinite period, is taken up to the supreme court by demurrer, where it is tried as though it had been an original entry. The defendant is not consulted, it may be observed, as to the jurisdiction to which he shall be amenable. The causes removable in these various modes are principally litigated cases. The number thus annually removed is about five hundred, and at a needless and useless expense to the parties, of at least fifteen thousand dollars annually, and probably much more. All payments made to counsel, to witnesses, and to the clerk—in the aggregate no inconsiderable sum—are made without the slightest benefit to anybody, save to the clerk and counsel receiving them. The expense is not all. The delay necessarily consequent upon this system, is an evil of no trivial magnitude. Were any good attained by this delay, were any benefit conferred upon either party by this expense, it might be cheerfully borne, but when it is demonstrable that this waste of time, and expenditure of money, in no degree benefits parties, it becomes a grave question whether any reasons exist for its further continuance.

The various reasons, which have been adduced for the continuance of this system, will be briefly indicated and considered. It is frequently urged, that the district court is of great service in enabling parties to know each other's strength preparatory to a final trial, so that thereby they may respectively be prepared to meet any deficiencies in the proof, which may have occurred on the first trial. The very suggestion implies neglect in the preparation of a cause on the part of counsel, and a facility in obtaining any proof, which the emergencies of a case may require, not very consistent with integrity in the parties. It enables each, to use a common expression, "to know each other's hand"—a thing very desirable,

undoubtedly, at the gaming table. But it will be observed, that to all cases carried to the supreme court by demurrer, which constitute a large proportion of the appealed causes, this argument is inapplicable. In many cases, only one party calls his witnesses, and his antagonist, withholding all proof on his part, ascertains what his opponent can offer, thus defeating the very objects for which, if for any, the present system exists. When a trial of strength is had, the knowledge thus gained of each other's evidence is mutual; neither party gains, or their gains being equal, no benefit is conferred upon either. To be sure they know each other's strength, and they equally know each other's weakness. If the parties are both honest, the knowledge thus acquired, being equal, leaves the parties relatively as they were before the trial, with simply the loss of their time and money, and thus crippled to continue the contest. If either party should be dishonest, or unscrupulous, knowing what is proved, and what he may need to have proved, he will set himself about manufacturing such evidence as the urgency of his position may require. In case of surprise, by reason of unexpected testimony, a party is entitled to delay or a continuance. In case of the discovery of new and material testimony, after the verdict, the party so discovering such new and material testimony, can have his review, in case he has been guilty of no neglect. One trial, with the protection which the law affords against surprise, and with the right of review, is all that is necessary for the purposes of justice. They require that there should be an end of suits. A multiplicity of trials of the same suit, tends much more to the falsification of proof, and the promotion of perjury, than to the integrity of witnesses or the purity of jury trials.

Most favorably stated, the argument amounts to this: that it is advisable to retain a court for the purpose of enabling parties to learn each other's proof; a court where counsel and witnesses may rehearse their several parts, each for the benefit of his opponent; where nothing final is done or is expected to be done; where the only things real and important are, the costs which both parties needlessly incur, and the expenses which the public must bear in enabling this to be done.

It is sometimes urged, that it would ill befit the dignity of the highest tribunal to be engaged in trying cases of such trivial moment as would come before them, under the proposed arrangement. If the dignity of the court were the object for which it is created, the argument would be unanswerable. But courts are created for other and more practical purposes. The judge should give dignity to the court, and not the court to the judge; and, whether he be engaged in determining the rights of the rich, or adjudicating upon the pittance of the poor, the dignity of an able, and impartial administration of justice, is in either case the same. The importance of the principle involved depends in no respect upon the amount at stake; and if it did, it is not perceived why justice is not as desirable in small matters as on great occasions.

The utility of the court is sometimes thought mainly to consist in sifting actions. But a metaphor is no argument. Sifting actions?—as if justice to a poor man was the bran, and not deserving the attention of a dignified tribunal—as if justice to wealth was the finest flour, and would alone answer the requirements of the judicial palate.

In New Hampshire, the jurisdiction of their supreme court is more extensive than is proposed in the bill accompanying this report; yet the necessity of the district court as a sieve has never there been felt, and notwithstanding cases of small amount come before them, in few if in any States has the law been administered by a bench of more dignity, ability and learning. But when it is perceived how expensive this instrument is, and that its workmanship is such that the bran readily passes through its interstices—that there is no case, however insignificant, which by exceptions or in some other mode, may not reach the supreme court—it remains to be seen, whether it may not, with great advantage to the public, be laid aside as useless and undesirable.

It is sometimes objected, that one court from the crowded state of the docket, would be unable to do all the business, which would come before them. The amount of business is such, in the district court, that a new judge is probably needed to enable that court to

try the causes which are pending, and meet the judicial wants of the State. The bill proposes the addition of the same number on the supreme bench, as are now on the bench of the district court. It must be remembered, that the docket, if there is but one court, will always be less than the aggregate docket of both courts, by the amount transferred from one court to the other, in the various modes already indicated; and the time spent in hearing, or disposing of cases, which are to be reheard on appeal, will be saved. One court, with the same time at its command, can obviously accomplish more than two. The same number of actions can be more easily and quickly disposed of, if on one docket alone. The same number of judges can more readily meet the exigencies of judicial business, where there is but one, than when divided into two courts. With the other changes proposed, a system will be established, by which a more speedy, and less expensive justice can be obtained.

By this arrangement, the expenses of suitors, and of the public, will be materially diminished. The costs of all cases carried up from one court to the other, of every description, the time of witnesses, parties and counsel, and the delay amounting almost to a denial of justice, will be avoided. One set of grand jurors will be required, instead of two, and the time during which the presence of the traverse jury is needed, will be sensibly lessened. The incidental, but necessary expenses of the court, will fall away as the length and number of terms shall diminish. With the number of judges proposed, the whole judicial business of the State can be done speedily and satisfactorily, and those delays incident to the present system, and which tend to bring reproach upon it, be avoided. Were there any real or substantial benefit in any perceptible mode derived from the present system, the case would be different; but all these items of expenditure, in the aggregate amount to a large sum, are without correspondent remuneration in the shape of useful service rendered to any one.

2. An important innovation proposed, and one which it is thought will be of great utility in practice, is that by which the presiding

judge is required to decide any cause, when both parties shall so desire it, without the intervention of a jury. There are very many causes where, were it allowable, both parties would prefer a determination of their respective rights by the presiding judge, in preference to submitting them to the jury. No such duty is now imposed on the court. The judge may report the evidence, but he can not be required, as a part of his official duty, to hear, and after hearing, to decide. The provision, upon this point, in no respect interferes with the rights of a party to a trial by a jury, but merely makes it the duty of the judge to hear and decide all matters, both of fact and of law, which may arise in a cause, if both parties so elect, and that his decision shall be final. In all cases of complication or detail, this is an arrangement which would frequently be preferred. Here is afforded to parties litigant, a referee, if you so please to term him, able, intelligent, of tried integrity, and of unquestioned legal attainments, to whom the parties can submit their rights. The jury causes will be first heard, and then, after they have been dismissed, the judge can proceed to hear and determine all such causes as the parties have withdrawn from their consideration. Causes of complication, or of detail, may be more speedily and satisfactorily tried in this than in any other way. This arrangement affords to suitors a tribunal for that very considerable class of cases better fitted for a reference than a jury, and if adopted, will, in practice, lead to a satisfactory disposition of very many suits. No possible evil can result, as the jurisdiction is optional on the parties. No objection can arise on the part of the court, for the trial and decision of causes are the objects for which they are appointed, and the mode and manner in which their powers shall be exercised, are exclusively for the determination of the legislature.

3. The provision by which either party, upon producing such papers as he proposes to offer in a cause to the inspection of his opponent, at such time and place as the court, upon motion, shall appoint, may be relieved from the necessity of proving the genuineness of the signature affixed to the paper so produced, unless the

adverse party shall file an affidavit, in which he shall deny the genuineness of the signature, if it purports to be his own, or his disbelief of its genuineness, if it be that of another, or if there be an attesting witness, that his presence is necessary and important in the trial of the cause, will tend exceedingly to prevent delay and promote the attainment of speedy judgments in suits not litigated, as well as materially lessen the expenses of litigated suits. Under our present practice, all papers offered must be proved, if the signature is denied, although in fact there is no question as to their genuineness. The forgery of papers is of rare occurrence. The inconvenience and annoyance resulting from the expense thus needlessly incurred, is not inconsiderable. A suit may be delayed an indefinite length of time, or a party may be driven out of court, or if allowed to remain, be compelled to purchase that right upon terms more or less onerous, according to the then existing state of mind of the then presiding judge, when, perhaps, the only reason why the witness was not produced, was because the counsel or party did not anticipate the denial in, of what would readily be admitted out of, court. Every one knows his own contracts, and it is no hardship upon him if a paper bearing his signature is received, when he, upon presentation and examination, will not deny it upon oath. So, too, of other papers and contracts, &c., having a bearing more or less important upon the cause, if the party whose rights are to be affected by them, if genuine, sees no reason to doubt their genuineness, it is worse than useless to require their proof. If a party sees no reason to deny or doubt the genuineness of a signature, there seems no reason why his opponent should be at the expense of proving it. As the attesting witness may frequently be an important witness in reference to other matters, and as the burthen of calling him should properly be imposed upon the party producing the paper to which his attestation is affixed, the production of such witness is made necessary or not, at the election of the party against whom the paper is to be produced.

Indeed, there are, in most causes, very many questions, which, under a judicious system of procedure, should be conceded in the

outset, and the witness called only to the point really in dispute; and rules might be framed by which the costs of issues unnecessarily made, or of witnesses whose presence was made necessary by the bad faith of a party, should be taxed against the party so requiring such proof, even by the losing party. There may be occasions when a portion of the costs of the losing party may be taxed with propriety against his successful antagonist, as well as those in which he should be limited in the taxation for witnesses. But we do not propose to discuss the general principles of practice. We have inserted this provision, though not strictly within our commission, because we believed that it would effectually prevent that delay and useless expense, which results from a wanton denial of signatures undoubtedly genuine, and which a party may not be able to prove at a moment's notice. If a denial is to be made, it should be after opportunity for inspection, and under the penalties of perjury.

4. To a juryman, it is deemed a valid and sufficient exception, that he has formed or expressed an opinion of the merits of a cause, which is about being submitted to the jury, of which he is a member. In the trial of a jury cause, the judge who presides prescribes the rules of law by which the jury are to be governed, in coming to a conclusion, and forms an opinion of the facts, and consequently of the propriety of the verdict rendered upon those facts. He forms his opinion of the law, and gives such rulings as the position of the case may require, after ample discussion and mature deliberation. Occasionally, to be sure, the ruling is merely formal, and to give progress to a cause; but ordinarily it is the judgment of the presiding judge. He forms his opinion of the facts, after a full hearing of the testimony, and of the respective views of counsel upon the force of that testimony. An able judge, under such circumstances, could not avoid forming an opinion of the facts, if he would, and not unfrequently he gives no slight indication of that opinion, and in his charge foreshadows an expected verdict. He would, therefore, consequently, be more liable to objection, if the correctness of the law by him laid down, or the propriety of the

verdict were to be discussed by the court, of which he constitutes part, than was the juryman, whom, in an early stage of the trial, he had excluded. The case is hardly supposable, when the juryman should have had equal opportunities for the formation of an opinion. But the greater the opportunity for the formation of an opinion the greater the probability of adherence to such opinion. If the opinion of the judge, thus formed, be erroneous, its injurious influence upon the minds of his associates will be the same in kind, and of the same nature, as that of the juryman upon his fellows. If it be correct, and well founded, the rest of the court may reasonably be expected to perceive and adopt it, and his intelligence is no more needed to enlighten them, than is that of the juryman in respect to his fellows. But as it cannot be foreknown whether such opinion will be right or wrong, and as, if right, his presence will not be needed, and if wrong, might be injurious, he should be excluded. The argument, therefore, for exclusion, presses with greater force against the judge than the juryman. His opinion may be right, his rulings may be correct, but whether right or wrong, correct or incorrect, he is hardly a fit person to revise his own opinions, or impartially to review and reconsider his own decisions. To decide the law upon exceptions or report, the exceptions or report should alone influence the judgment. All that has previously transpired should be as though it never had been. But no judge can be expected to erase from his memory the facts which have transpired during the hearing of a cause, nor the opinions which he has then formed. No one would for a moment consider it just or proper, that a juryman should be permitted, for a second time, to hear and determine a cause which has been carried to a higher tribunal, by appeal from a judgment rendered on a verdict, to which as a juryman, he had been a party. It is difficult to perceive, in principle, any important distinction between these cases. There is a pride of opinion, varying to be sure in different minds, but from which no one is exempt, which incapacitates to a certain extent, the individual who has deliberately formed an opinion, from canvassing its correctness with the same impartiality with which another would dis-

cuss and determine the proposition which is in dispute. The very paternal instinct favors the retaining a verdict, in the getting of which the presiding judge has acted so important a part. The hypothesis upon which so remarkable an anomaly must rest, would seem to be, that a judicial position divests the judicial mind of that pride of opinion, and frees it from those prejudices, to the sinister influence of which the rest of humanity is so undeniably exposed. Unless the judicial station should be deemed, by force of its office, exempt from the ordinary frailties of humanity, it would very obviously seem proper that it should not unnecessarily be exposed to influences which might unintentionally and unwittingly, on its part, interfere with and obstruct an impartial administration of justice.

For these or other reasons, many have deemed it so important that the law court should be distinct from the court by which jury causes are tried, that they have advised a separate court, whose exclusive and only duty should be, to decide upon all questions of law, which might arise at *nisi prius*, requiring adjudication; and that the judges, who are to determine the law, should be a distinct tribunal from that before which the trial of fact was had. Such has been the course adopted in many of the States. But in practice, it is found highly desirable, that the judges who are to decide the law should be fully acquainted with its workings, in the ordinary course of its administration. The provision we have suggested accomplishes, with no inconvenience, all these objects. The supreme court of law will in each case be composed of judges, who must form their judgment, and render their decision, upon the papers before them, unbiassed by any pre-conceived views of the law, or of the fact, free from all pride of opinion—from all anxiety to sustain any particular view of the law—from all reluctance to try again a cause which, from its length or complexity, may have been annoying—while at the same time, the habit of presiding at jury trials gives them that readiness and practical skill in the application of the law to a given state of facts, which can only be acquired in that way.

5. Various considerations have induced us to advise three terms

only for the hearing of all questions of law and equity. Not the least important is the great saving of the time of the court, which is thereby gained, and which, by this arrangement, may be devoted to the public service. The law circuit commences in April and ends in July, occupying in the whole sixteen or seventeen weeks. The time of the court, though not actually occupied during all this time in the hearing of law questions, is so broken in upon, that to all practical purposes, it is lost. In some counties the law arguments do not occupy more than part of a day, in others two or three days, and not over a week in any of the counties, save those of Cumberland and Penobscot. Now, as matter of economy, no good reason exists, why the court should be required, under these circumstances, to wander over the State. In New York and Pennsylvania, and some other States, but three places are appointed for the hearing of law questions. In New Hampshire and many other States, they are all argued and decided at the seat of government. We have thought it advisable that the present division of the State into judicial districts should be retained, and that the cities of Portland, Augusta and Bangor, should be the places where all questions of law could most conveniently be heard in the several judicial districts in which they are respectively located. If this system should be adopted, the questions of law and equity arising throughout the State would be heard in less than half of the time now occupied by the court for that purpose. With the court as now constituted, there would be a saving of eight weeks of the time of each member of the court, amounting to a saving of more than half a year of judicial time, which could, being disengaged from the onerous duties of the law circuits, be occupied in the performance of other judicial duties, as the trial of causes, or the drawing of legal opinions. If the legislature should see fit to adopt the proposed bill accompanying this report, at least one year of judicial time would be saved. This arrangement would, it is apprehended, be considered very desirable on the part of the court, would be of no slight saving to the public, and would be attended with no inconvenience of any moment.

At first, it may be imagined that objections to this arrangement might arise in those counties, where the law terms will cease to be holden. But it is apprehended this cannot be the case. They will be more than compensated by the additional time left at the disposal of the court for the trials by jury. In Aroostook there is but one term of the district court holden during the year, and none of the supreme court. This bill gives the county two terms. In Piscataquis, Franklin, Washington and Hancock counties, there is but one term for the trial of issues, and that holden immediately after the disposal of the questions of law. In practice, it would seem much more desirable to allow them more of the time of the court for the trial of such issues of fact, as may arise. The proposed change is one, which only affects the bar. Neither parties nor witnesses ever attend at the hearing of law arguments. The public, therefore, have a most manifest interest in adopting a change, which will give them more of the time of the court. The bar, then, are alone interested in this question. But the bar generally would as soon attend at the central point in the district as at the shire town, and perhaps prefer it. Save those members of the bar who reside in the shire towns of the several counties, no inconvenience would be experienced by any one. By entering actions on the law docket by counties, and by giving the most distant the precedence in the disposal of actions, the inconvenience to the few members of the bar interested will be very slight.

Most cases can be better and more satisfactorily argued in writing than orally. The rule of court requiring briefs to be furnished the court has been found admirable in practice, and will, to a great extent, supersede oral argument. The views of counsel presented in this mode have a more permanent form, the court are enabled more clearly to perceive and more fully to appreciate their force, than if presented in an oral argument, however able or eloquent. No inconvenience will result from the arrangement, while a great saving of the time of the court will have been gained. It in no way affects suitors injuriously, but otherwise, enabling the court, by having more time at their disposal, to give an earlier decision than

could otherwise be had. The imaginary, not the real interests of perhaps a few members of the bar can alone be urged in opposition to this change, and whether they shall prevail against what seems most obviously expedient and desirable, is for the legislature to decide.

6. Questions of review in the district court are now heard by but one judge. The hearing of the same question, if to be had before the supreme judicial court, is before the full bench. It is rather remarkable, that one judge of the supreme court is not empowered to do what is entrusted to the discretion of a judge of the district court. The bill confers this power on one judge, but as in petitions for review, as in all other cases, questions of law may arise, it is provided that the presiding judge may report the facts and the questions of law thereupon arising, for the decision of the full bench, whensoever so required.

So, too, probate appeals are now made to and heard by the supreme court sitting as a court of law, except when an issue is framed for the jury. It is deemed expedient that all questions thus arising should be heard by the presiding judge at *nisi prius*, instead of referring them to the full court. The opinion of the full court may be had as to all matters of law, but in all cases of judicial discretion, that of the judge at *nisi prius* is made final and conclusive.

7. It has been ascertained, upon inquiry, that the judgments in a fourth of all suits pending in the district and supreme courts, are rendered for a less sum than fifty dollars. Of all the suits pending, much the largest proportion are for the purposes of collection. The increase of the jurisdiction of the police or municipal courts in the several counties in which they are or may be established, will relieve the supreme court of a large mass of suits brought for collection. Parties commencing suits in those courts can have a speedy judgment. The amount over which these courts have jurisdiction is so small, that appeals for mere delay cannot be expected. The restriction of double costs, with the right to require special sureties, will effectually prevent appeals for delay only. In cases to be litigated, if either of the parties on the return day demand a jury, the cause is at once removed, with but trivial expense, to the supreme

judicial court. It may reasonably be expected that parties desirous of speedy judgment in uncontested cases, will prefer these courts. If these expectations should not be realized, still this increase of jurisdiction will be unattended with practical inconvenience.

These courts exist in several of the counties — York, Cumberland, Lincoln, Kennebec, Penobscot and Washington — where the dockets of the higher courts are most crowded, and will most materially relieve the supreme courts from all suits for the collection of small debts. In the counties where these courts are not established, the pressure of business is not so great as to seriously interfere with the speedy attainment of judgments.

8. In the larger counties, great inconvenience arises from the interference of the criminal with the civil business of the court. The grand jury generally comes in on the second week of the term. If the criminal business is then taken up, how long it will continue no one can tell. The parties and witnesses go home, there to remain till the completion of the criminal business, and as its duration is uncertain, it frequently happens, that when the criminal docket is disposed of, parties and witnesses are not present. If the witnesses remain, a great expense is incurred, which parties are unable to bear, and if they do not remain, it is at great peril if they mistake as to the time when their presence will be needed.

The separation of the criminal from the civil terms of the court, has been adopted in Massachusetts, where, in practice, it has met with general approbation, as conducing to the convenience of suitors and the accommodation of the public. It is believed that a similar course might be adopted in some counties in this State, and that it would be found useful and convenient, and a great saving of cost.

The object in view, in proposing separate criminal terms, might be accomplished without special legislation, were the practice uniformly adopted in the larger counties, where the pressure of business is the greatest, to fix a definite time, each term, for the hearing of the criminal business, after allowing sufficient time for the disposition of all the civil business of the court.

9. Equity cases it is proposed to hear at *nisi prius*, and before one judge, upon oral or written proof, as the parties may select. It is highly desirable that parties, in all cases, should have their witnesses before the court which is to decide upon their testimony.

There are no valid reasons for the different modes of extracting proof which exist in equity and at common law. That course which serves best to elicit the truth at common law, must be equally desirable and efficacious for the same purpose in equity. The trial by jury owes its utility, and its popularity, in no slight degree, to the mode in which evidence is extracted in the common law courts.

In giving one judge the power to determine the fact, and decide the law, we only adopt the ordinary rules of equity. It is better to leave the facts to the decision of one judge, who will have the aids which examination and cross examination, the appearance and manner of a witness, afford him in arriving at a result, than to leave it to men, who, from the present organization of the court, cannot have those advantages. A decision of the facts must be had, and that responsibility is as well imposed on one as on many. The facts established, and the law applied to those facts, if there be an error in the law, it may be corrected by the full court, if the cause is brought before them.

The suggestions we have considered, embrace various modifications of existing law, which have been proposed with a full conviction, that in practice, they will be found of decided advantage in its administration. That they will diminish the expense and accelerate the progress of suits, cannot be doubted. These changes are not necessarily connected, and whatever may be done in reference to retaining or abolishing the district court, the adoption of the rest will tend materially to promote the speedy performance of the judicial business of the public. Notwithstanding the saving of the time of the court, which may reasonably be expected as resulting from these changes, we have deemed it advisable to recommend that the present judicial strength should be retained. The labors of the supreme court are exceedingly arduous, and the learning and ability displayed in their performance, are only equalled by their

untiring devotion to the public service. If the legislature should consider that the public good requires the transfer of the jurisdiction of the district, to the supreme court, there should be a sufficient number of judges added to the present court, to enable them promptly and without delay to meet all the requirements of the public. This can all be accomplished with diminished expense to the public and to suitors, and the delays unavoidably incident to the present system be avoided.

JOHN APPLETON,
GEORGE. M. CHASE.

STATE OF MAINE.

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

AN ACT concerning the Supreme Judicial Court and its jurisdiction.

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

SECTION 1. The act establishing the district courts and their jurisdiction, and all acts additional thereto, are hereby repealed, and the entire jurisdiction, civil, criminal and appellate, of said district court, and all powers incident thereto, are hereby transferred to and conferred upon the supreme judicial court, which court shall henceforth exercise the same in the same manner as heretofore authorized by law to be exer-

cised by said district court, or as the supreme judicial court are authorized to exercise the same in similar cases; and shall grant any execution or other process necessary to carry into effect any judgment, order, or decree of said district court, as fully as said district court might have done, had not this act been passed.

SECT. 2. The records of the district court and the custody of the same, in each county, is transferred to the several clerks of the supreme judicial court for such county, to whose attestation of the same, or of their contents, full faith shall be given.

SECT. 3. All indictments and informations, all civil suits and all other processes, civil or criminal, pending in the district court, shall be and hereby are transferred to the supreme judicial courts of the several counties in which they are pending, and shall be entered on the docket of the same at the first term next after the passage of this act, and shall have day therein; and all writs, petitions, warrants, and recognizances, appeals in civil and criminal cases, and all processes whatsoever, returnable to or which by law should have been entered at the term of said district court next after the passage of this act, shall be returnable to and

be entered on the docket of the said supreme judicial court, at the term of the same holden next after the term in which, if this act had not been passed they would have been entered, and shall have day in said supreme court. And all parties, jurors, witnesses, and others who would have been held to appear at the term of the district court next to be holden after this act shall take effect, shall be holden to appear at the term of the supreme judicial court next holden after said term of the district court.

SECT. 4. The State is hereby divided into three judicial districts, which shall be denominated the western, middle, and eastern districts.

The western district shall be composed of the counties of York, Cumberland, Oxford, and Franklin.

The middle district shall be composed of the counties of Lincoln, Kennebec, Somerset, and Waldo.

The eastern district shall be composed of the counties of Piscataquis, Penobscot, Hancock, Washington, and Aroostook.

SECT. 5. There shall hereafter be three additional justices of the supreme judicial court, making the number seven instead of four, as now prescribed by

law, who shall be appointed and commissioned as prescribed in the constitution.

SECT. 6. The supreme judicial court shall be annually holden by at least a majority thereof, for the purpose of hearing and determining all questions of law or equity, which may arise in any mode, in the several places and on the several days, as follows:

In and for the western district, at Portland, on the second Tuesday of May.

In and for the middle district, at Augusta, on the second Tuesday of June.

In and for the eastern district, at Bangor, on the second Tuesday of July.

SECT. 7. The several clerks of the supreme judicial courts for the counties of Cumberland, Kennebec and Penobscot, for the time being, shall also be the several clerks of the western, middle, and eastern districts respectively, and they shall severally keep a docket for each district, upon which shall be entered all cases at law or in equity pending in any county in the district, and removed to and entered at the law term in the order of counties, as follows:

Franklin, Oxford, York, and Cumberland, in the western district.

Waldo, Somerset, Lincoln, and Kennebec, in the middle district.

Aroostook, Washington, Piscataquis, Hancock, and Penobscot, in the eastern district.

SECT. 8. All motions for new trial upon evidence as reported by the presiding justice, all questions of law arising on reports of evidence, exceptions, agreed statements of facts, cases in equity, and all cases, civil or criminal, where a question of law is raised for the determination of the supreme judicial court, sitting as a court of law or equity, shall be respectively marked law, on the docket of the county where they are so pending, and shall be continued on the same until the determination of the questions so arising, shall be respectively certified by the clerk of the district to the clerk of the county where they are pending, except as is provided in the tenth section of this act.

SECT. 9. The judgments, orders, or decrees, of the court at the law term, shall, if made in term time, be entered by the district clerk on his docket, or if pronounced at any term held for the trial of causes by a jury in any county, the same shall be certified, by the clerk of such county, to the clerk of the district in which the same is pending, who shall enter such

judgment, order, or decree, on his docket, and shall certify the same to the clerk of the county where the same is pending, and such further proceedings shall there be had, and such judgment shall be entered up, as the order or decree of the court shall require.

SECT. 10. In case said suits civil, criminal, or in equity, and thus marked law and continued on the dockets of the supreme judicial court, for each county, respectively, shall not have been entered at the next succeeding law term within the district, by the party whose duty it was so to have entered them, then upon motion and proof thereof, the presiding justice, at the next, or the second succeeding term after the law term, in which they should have been entered, shall enter up such decree, or render such judgment by nonsuit, default or judgment on the verdict, or other mode, as to law and justice shall appertain.

SECT. 11. No justice shall take any part whatsoever in the hearing, deciding, or determining, any question of law or in equity, in which exceptions have been taken to his orders, rulings, decisions, or decree, or in which any ruling or decision of his in matter of law may be over-ruled or reversed.

SECT. 12. The justice presiding at terms holden for jury trials, shall hear and determine all causes whatsoever, without the intervention of a jury, when both parties shall have so agreed, and entered such agreement on the docket, and he shall direct what judgment shall be entered up in all causes so by him decided.

SECT. 13. All appeals from the decrees of the judge of probate, except such as by law are tried by a jury, which shall be tried as heretofore, and all petitions for review, may be heard and determined by the presiding justice, at any term held for the trial of jury causes, subject to exceptions to any matter of law by him so decided and determined.

SECT. 14. All causes in equity shall be heard and determined at any term, held for the trial of jury causes, by the justice then presiding, upon such depositions or testimony of witnesses produced and sworn in court, written, or other proof, as may be produced and legally admissible; and when requested, he shall report the facts proved, and the questions of law therein arising, and his decision of the same, and his decree upon the premises; and the party dissatisfied there-

with may remove the same by exceptions or report to the law term of said court for their decision, by whom the decree may be affirmed, or reversed in whole or in part, or a new hearing granted, or such other order or decree made in the premises, as the law shall require.

SECT. 15. The court for the trial of jury causes, and for such other matters as are by law cognizable by one justice thereof, shall hereafter be held in every year in the times and places, as follows:

In and for the county of York, at Alfred, on the first Tuesdays of January, April, and September.

In and for the county of Cumberland, at Portland, on the third Tuesdays of January and April, and second Tuesday of October, for the transaction only of the civil business of said court.

In and for the county of Oxford, at Paris, on the second Tuesdays of March, August, and November.

In and for the county of Franklin, at Farmington, on the third Tuesdays of January, April, and October.

In and for the county of Somerset, on the first Tuesdays of January, April, and October.

In and for the county of Kennebec, at Augusta, on

the fourth Tuesday of January, the third Tuesday of April, and the fourth Tuesday of October, for the transaction only of the civil business of said court.

In and for the county of Lincoln, at Wiscasset, on the fourth Tuesday of January, on the third Tuesday of April, and on the fourth Tuesday of October, for the transaction only of the civil business of said court.

In and for the county of Waldo, at Belfast, on the first Tuesdays of January, May, and October.

In and for the county of Penobscot, at Bangor, on the first Tuesdays of January, April, and October, for the transaction only of the civil business of said court.

In and for the county of Washington, at Machias, on the first Tuesdays of January, April, and October.

In and for the county of Hancock, at Ellsworth, on the fourth Tuesdays of January, April, and October.

In and for the county of Aroostook, at Houlton, on the second Tuesday of March, and third Tuesday of August.

In and for the county of Piscataquis, at Dover, on the last Tuesday of February, and the second Tuesday of September.

SECT. 16. The court for the transaction of all the criminal business thereof shall be holden in the several counties by one justice in the times and places, as follows:

In and for the county of Cumberland, at Portland, on the first Tuesday of March, on the last Tuesday of July, and on the last Tuesday of November.

In and for the county of Kennebec, at Augusta, on the first Tuesdays of March, August, and December.

In and for the county of Lincoln, at Wiscasset, on the first Tuesday of March, on the second Tuesday of August, and last Tuesday of November.

In and for the county of Penobscot, at Bangor, on the last Tuesday of February, the first Tuesday of June, and the last Tuesday of November.

The civil business of said court in the several counties of Cumberland, Kennebec, Lincoln, and Penobscot, shall be transacted at the three annual terms as provided in section fifteenth of this act, and the criminal business thereof shall be transacted exclusively at the three annual terms established for the transaction of criminal business; and all continuances of civil or criminal cases shall, without any

special order therefor, be had to the next term of the said court to be held for the transaction of business of the same description.

SECT. 17. The grand jurors who shall be returned to serve at the supreme judicial court, shall serve at every term thereof throughout the year, except that the grand jurors in those counties where there are terms for the trial of criminal causes, shall be required only to serve throughout the year at the terms established by law for the transaction of criminal business.

SECT. 18. Venires for grand jurors shall be issued forty days at least before the second Monday of September, annually.

SECT. 19. The clerks of the several courts shall in due season before every term holden for the trial of causes by a jury in their respective counties, or at such other times as the court shall order, issue writs of venire facias for jurors, and shall therein require the attendance of jurors on the first day of the term, or on such day as the court shall order.

SECT. 20. When a capital trial is to be had in any county, it shall not be necessary that more than three justices shall be present, to whose rulings or decisions in matter of law exceptions may be taken.

SECT. 21. In all cases specified in section eighth of this act, the parties may, if they shall have so agreed and entered such agreement on the docket, transmit to the court in vacation their respective arguments in writing, and it shall be lawful for the court to pronounce their decision at any term 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. 22. The purpose of this act being to repeal the act establishing the district courts, and all acts additional thereto, and to transfer to and confer upon the supreme judicial court all the powers and jurisdiction of said district court, this act shall, in all respects, be so construed as may best effectuate that purpose.

SECT. 23. In appointing justices, and in filling all vacancies which may occur, the appointments shall be so made that at least two justices shall reside in each judicial district.

SECT. 24. All acts or parts of acts relating to the terms appointed for the holding of courts in the different counties, and all acts and parts of acts, so far as the same may be inconsistent with this act, are hereby repealed.

STATE OF MAINE.

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

AN ACT additional to acts relating to the attorney general and his duty, and of county attorneys.

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

SECTION 1. It shall be the duty of the attorney general to attend, when practicable, at all the sessions of the supreme judicial courts holden for the hearing and determining questions of law, and at all capital trials in any county, upon being thereto notified by the clerk of the time, when said trial is to be had.

SECT. 2. The county attorney for each county, shall attend at the several terms of the supreme judicial court in his county, and act for the State

and for such county in all cases where the State or county may be a party; and in the absence of the attorney general, shall act for the State in all matters belonging to the attorney general in the county for which he is attorney, under such directions as may be given him by the attorney general.

SECT. 3. In case the attorney general shall not attend at any law term, the attorney for the county in which such law term is holden shall act for the State and county in all matters within the district in which the State or any county in said district is a party or interested.

STATE OF MAINE.

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

AN ACT of and relating to the municipal and police courts in the State.

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

SECTION 1. The several justices of the several municipal and police courts, now or hereafter established, shall have original and concurrent jurisdiction in the several counties in which they are or may be established, with the supreme judicial court, where the debt or damage exceeds twenty, and is less than fifty dollars.

SECTION 2. When upon the entry of such action either party shall claim a trial by jury, the cause shall

thereupon be removed to the then next term of the supreme judicial court in said county, to be then and there tried in the same manner as if an original entry therein.

SECT. 3. The party requiring the cause to be so removed, shall recognize to the other party in a reasonable sum, with sufficient surety or sureties, with condition to enter said action at the supreme judicial court next to be holden in the same county: and if he fail so to recognize, the justice shall hear and decide the cause in like manner as if no such request had been made to remove the cause.

SECT. 4. The party so recognizing, shall produce at the supreme judicial court, a copy of the record, and all such papers as are required to be produced by an appellant: and if he fail so to do, or to enter said action as before provided, he shall, upon complaint of the adverse party to said court, be then nonsuited or defaulted, as the case may be; and such judgment shall be rendered, as law and justice shall require.

SECT. 5. The party appealing from any judgment of any police or municipal court, at which he is aggrieved, shall, before such appeal shall be allowed,

recognize to the adverse party, in such form as the court shall order, to prosecute his appeal with effect, and pay all intervening damages and double costs if he shall fail to increase the judgment appealed from, if in his favor, or to diminish it, if it was against him.

STATE OF MAINE.

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

AN ACT of proceedings in civil actions in court.

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

Either party, in the trial of any cause, may pro-
duce at such time and place as the court may, upon
motion, appoint, all deeds, contracts, notes, and
papers, of every description, which he shall propose
to use in said trial, for the inspection of the opposing
party, which, if admissible, shall be received without
proof of the hand-writing, unless the party to whom
they are at the time and place appointed, offered for
inspection, shall make affidavit, which shall be placed

upon the files of the court, that the signature, if purporting to be his own, is not genuine, or that the paper or papers so produced have been fraudulently mutilated or altered—or if purporting to be that of another, that in his belief it is not a genuine signature of the person whose signature it purports to be, or that he believes it has been fraudulently altered or mutilated, or if there be an attesting witness that he believes the presence of such attesting witness necessary and important for the purposes of justice.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, March 27, 1852.

ORDERED, That 1,000 additional copies of printed document No. 33 of this House, be printed for the use of the Legislature.

EDMUND W. FLAGG, *Clerk.*