# DOCUMENTS

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# REPORT

OF THE

# ATTORNEY GENERAL

OF THE

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# REPORT.

*To the Honorable Governor and Council of the State of Maine:*

I have the honor to submit my fourth annual Report, in accordance with the provisions of law.

During the past, as well as the two previous years, I have replied to large numbers of letters from municipal officers and the families of soldiers, in relation to the construction of the various acts providing for aid to those dependent upon our soldiers. There is no law making it the duty of the Attorney General to give opinions in such cases, but inasmuch as the State was directly interested, I have deemed it my duty to do so. The nature of the questions submitted, and the occasion which has given rise to them, have certainly not diminished my inclination to answer them.

The case, *State vs. Benjamin D. Peck et als.*, has not yet been tried. The trial will involve the examination of nearly all the books in the office of the State Treasurer. At the January and April Terms, those books cannot be removed without great inconvenience to all departments of the Government. For this and other reasons the case was continued at those terms. It was my intention to try it at the October Term, but the pendency of three capital cases, one of them unusually difficult and complicated, compelled me to relinquish my design.

The case *State vs. Neal Dow*, remains in the same condition as last year, in consequence of the continued absence of the defendant. General Dow proposed to submit the case to the Law Court upon a statement of the facts. This proposition was assented to. I drew up a statement of the facts as I understood them, and presented it to his counsel. They could not agree to it, without submitting it to him. They sent him a copy, but he returned it unsigned, saying he should be at home the following spring and would attend to it. The reasons of his failure to re-

turn are known. Under the circumstances, I have not considered it justifiable to press the case to trial in his absence.

It has been agreed to submit the cases of *State vs. Walter Brown*, and *State vs. John Wyman*, to the Law Court upon a report of the evidence. I have partially prepared that report, and expect that the cases will be presented to the Court before my term of office expires.

Messrs. Allen and O'Brien in 1862, commenced an action against the late Warden of the State Prison upon the award of Messrs. Hersey and others in their favor, to test the validity of the award. Although it did come within the duties of my office, at the request of Mr. Tinker, I appeared in defence. A statement of facts was agreed upon and the case has been submitted to the Law Court upon written arguments. A decision may be expected at an early day.

No provision is made by law for the payment of officers', clerks', witness and jury fees, in civil cases, in the name of the State. In a trial requiring the attendance of many witnesses, the counsel of the State would be seriously embarrassed. This defect in the law should be remedied.

In a former report, I recommended that the Judge presiding, when a grand jury is empanneled, should be required by law to examine the *venires* and returns thereon, and adjudicate upon their sufficiency; and that it should be further provided that his adjudication should be final, except that the Court, in its discretion, might revise it, if the ends of justice should require it. Two years additional experience has confirmed me in the opinion that such a law should be enacted.

Several cases have been carried to the Law Court upon questions which could have been avoided by such a law. In some counties, after the grand jury has been dismissed, the indictments found by them have been pronounced void, because of some mere formal, technical defect in the return upon a *venire*. No injustice can be the result of such a law. The only objection to it is, *that it will destroy one of the loopholes through which criminals may escape justice!* Is that a valid objection?

The law provides, that in capital cases, a list of the traverse jurors summoned shall be furnished to the prisoner, and also gives him ten peremptory challenges. Each juror is sworn to make true answers to questions put to him to test his impartiality. If on

such examination, he is found not to stand unbiased, he is set aside. If he is pronounced by the presiding Judge, competent, the prisoner may challenge him and have him set aside without assigning any reason, unless he has already caused ten to be set aside in that manner. This privilege was undoubtedly given to the prisoner to allow him to keep from the jury, men who, in strictness of law, might be competent jurors to sit on the trial, but yet from their situation, etc., might be supposed to be in a measure hostile to him. The Government has no power to get rid of men of the opposite character. I am compelled to report that in many instances this privilege of the prisoner has been abused. It has been used not merely to keep objectionable men off the jury, but to get men on the jury, who are supposed to be favorable to the prisoner. The list of jurors is made out, and they are called in alphabetical order. If there is a man on the list who can be tampered with in advance, by the friends of the prisoner, or who for any other reason is wanted on the jury, the right of challenge is used for the purpose of exhausting the pannel without filling the jury until that particular juror is reached. I *know* that in several instances, this process has been adopted for the purpose of placing on the jury some particular *personal* or *political* friend of the prisoner's counsel. The fact that such efforts are made, shows that some advantage is expected from them. The relatives of the accused are excluded, and for the same reason his strong personal friends ought to be; and undoubtedly *would be* if the fact appeared to the Court. But the friends of the prisoner's counsel, as I have found by experience, though they may have formed no opinion which will exclude them from the jury, sympathize so strongly with him, that they cannot act with entire freedom from bias.

A partial remedy would be afforded by giving the Government a limited number of peremptory challenges, but a more complete remedy would be to require that the jurors be called in the order in which their names are drawn from a box by the clerk of court, in the same manner as they are drawn as jurors. This method is in use in most of our sister States. It is fair; and while it gives the prisoner an opportunity of challenging any juror which may be objectionable to him, it takes away the motive for rejecting good, impartial men, with the intention of having upon the jury some man *who is not regarded by him* as strictly impartial. I recommend the subject to the prompt attention of the Legislature.

The rapid increase of capital crimes in our State is alarming to every good citizen. The question is anxiously asked,—is there no remedy? A glance at the history of the policy of the State in this respect, *may* suggest the remedy. The last execution, under the laws of the State, was that of Sager in 1832. I have not been able to ascertain the number of convictions of capital crimes in this State previous to that date. There were two, at least, and perhaps more. In 1837, our present law was enacted; that any one convicted of a capital crime shall be sentenced to be hung, but "shall at the same time be sentenced to solitary confinement and hard labor in the State prison, till such punishment be inflicted; but he shall not be executed within one year from the day the sentence of death was passed, nor until the whole record of such proceedings or case is certified by the clerk of said Court, under the seal thereof, to the supreme executive authority of the State, and a warrant is issued by said executive authority, under the great seal of the State, etc." [R. S., Ch. 135, Sec. 7.]

There was no conviction for a capital crime from 1832 till 1844, when Thorn was convicted. He has never been executed and is still in prison. I am not aware that at the expiration of a year from the day when his sentence was passed, there was any discussion in relation to the law or the duty of the Executive to issue his warrant to carry the sentence into effect. The conviction of Coolidge in 1848, was the next in order. He died in prison before the expiration of the year, after sentence. But Governor Dana discussed the question as to his duty in two messages to the Legislalature. No change in the law, however, was made.

George Ploughman was convicted in 1850, and his sentence commuted to imprisonment for life.

There was one conviction in each of the years 1854, 1855, 1856, 1857 and 1859.

In 1860 the law was changed to authorize one Judge to preside at capital trials, with the right of exception to his rulings. So that though a verdict was obtained in 1860, sentence was not passed till 1861. In 1861 there were *two* convictions and sentences; in 1862, *two;* in 1863, *three.* In addition, in 1863, there have been *two* verdicts of conviction in capital cases, and *three* more cases are pending to be tried. Besides, one other murder was committed during the year, but the murderers were killed before they could be arrested.

In 1858 Governor Morrill brought the matter to the notice of the

Legislature. He stated that the Legislature, by taking no action upon the suggestion of Gov. Dana, had acquiesced in his construction of the law, and he should hold to a similar construction. No final action was taken by the Legislature in reference to the matter, though a bill to abolish capital punishment was introduced and printed.

It will be seen by a comparison of dates that the increase in capital crimes commenced when this construction was given to the law, and acquiesced in by the Legislature and the Executive. The recklessness of human life which is a necessary consequence of war, has undoubtedly contributed to the increase within the past two years. But the previous rapid increase cannot be charged to the war. An examination will show such a close connection between the omission to execute the death penalty, and the increase of these crimes, that it cannot be attributed to a mere *coincidence;* but must be the *effect* of the construction of the law to which I have referred.

I most respectfully submit that this construction which has been given to the law is clearly erroneous. One Legislature has no right or power to give a binding construction to a law enacted by a previous Legislature. It may, by an act passed regularly, determine that an act for the future shall be construed in a particular manner. But the force of this construction is derived not from the mere construction of the act by the Legislature, but from the new enactment.

It has been given as a reason for not issuing the warrant of execution in some cases, that the record has not been certified as the law provides before the warrant shall issue. That reason no longer exists. In every case in which I have been present when the sentence of death has been pronounced, the court has, upon my motion, ordered the clerk to certify the whole record to the supreme executive of the State, and this order has been complied with.

By Art. V., Part First, Sec. 1, of the Constitution, the supreme executive power of the State is vested in a Governor. By section 12 it is provided, "*He shall take care that the laws be faithfully executed.*" His oath of office is, "I will faithfully discharge to the best of my abilities the duties incumbent on me as Governor *according to the Constitution and laws of the State.*"

By the laws of the State, murder of the first degree "*shall be*

*punished with death.*" A man is convicted, and in accordance with the law is sentenced to be hung by the neck until he is dead.

A copy of the record is certified to the Governor.

The law, to give the prisoner time for reflection upon the enormity of his crime, and to prepare for death, requires him to be kept in solitary confinement until executed, and provides that he shall not be executed within a year from the day of the sentence, nor until the Governor shall issue his warrant fixing the time of execution, and commanding the sheriff to carry the sentence into execution.

Now can there can be any ground for holding that it is not the Governor's *duty* to take care that *this* law be faithfully executed?—that it is entirely a matter within his discretion whether to execute the laws or not? The law is, that the murderer SHALL BE *punished with death.* Because the law also provides that he shall not be executed until the Governor issues his warrant, does that leave it to the *pleasure* of the Governor to do or not to do what the law declares SHALL BE done? Is a neglect to issue the warrant a compliance with his oath?

I am aware that it has been said that the law of 1837 was intended to abolish capital punishment; not directly, but indirectly. This argument is *felo de se.* For if it was necessary to cover up the real intention of the framers of the law, in order to secure its passage, it follows that the Legislature which enacted the law did not understand it as abolishing capital punishment, and therefore never intended to do so.

If there is any doubt in the mind of the executive as to the true construction of the law, and as to the duty imposed upon him by it, I would suggest that he require the Judges of the Supreme Court to give their opinion on the matter. The law will thus be authoritatively settled, and all doubts removed. If it be settled that the law is different from what the Legislature desires it to be, they can interpose and amend it. Persons committing capital crimes will then understand what they must expect. I believe, also, courts would not find themselves in the humiliating position of imposing a sentence which the prisoner hopes and believes will never be executed.

The cold-blooded murder of the late Warden of the State Prison by one of the convicts, and the conviction of his murderer, will

present the question during the coming year under circumstances of peculiar importance.

This subject demands consideration for another reason. Not only is that part of the law requiring the execution of persons convicted of capital crimes disregarded, but also that part which provides that until the sentence be executed, the convict shall be kept in solitary confinement at hard labor in the State Prison.

The practical construction given to the latter clause has been to keep the convict in solitary confinement one year, and then, the Warden considering, I suppose, that if a *portion* of the law can be disregarded, the *whole* may be, the convict *is turned out to work with the other prisoners in the different shops, as if he was of the same grade of criminals.*

One reason for this course, that has been given, is, that it would be very expensive for the State to keep so many persons in solitary confinement. If the consideration of expense is to have any bearing upon the question, it is suggested that that argument is wholly in favor of executing the original sentence.

If the State cannot be at the expense of punishing criminals, it would seem best to save that of their trial also.

I have had occasion during the year to express to the Governor and Council my views in relation to proceedings on petitions for pardon. My observation and experience during the past four years have convinced me that one of the greatest obstacles in the way of the suppression of crime in this State is the frequent and improper use, not to say abuse, of the pardoning power. The fault may be in the system; and perhaps it is necessarily incident to it. If the framers of the Constitution could have foreseen the evil, they would probably have limited the power, or lodged it in some other department of the government.

That there are cases, though rare, when it is proper to exercise this power, I do not deny. But it has become a thing so common as to neutralize largely that fear of punishment which alone operates with bad men to prevent the commission of crime. Such men know that it is very difficult for the government to obtain a conviction. Both the statute and the common law are designed to favor the accused. He is presumed to be innocent until proved guilty beyond any reasonable doubt. So that while rarely, if ever, an innocent man is convicted, many who are guilty are acquitted.

Having taken the chances of a trial, if he is convicted, he

appeals to the presiding judge for a new trial. This can be granted at once, if the evidence is insufficient. In this way, if there is any mistake, it can be corrected, where all parties can be heard.

If he fails to get a new trial, he then appeals to the discretion of the court to impose a light sentence. In nearly all cases this discretion is very large. The parties are heard, all proper considerations are urged and weighed, and the court, acting under its responsibilty imposed by law, fixes the sentence.

But no sooner is the sentence imposed, and sometimes even before sentenced, the friends of the prisoner circulate a petition for his pardon, to which signatures can easily be obtained, regardless of the merits of the case. Counsel is employed as if the case were still pending. Affidavits are taken without any regard to the rules of law, in respect to the character of the witnesses, or the commission of the crime. There is no cross-examination, and only so much of the testimony of the witness is taken as will subserve the interests of the convict. The petition is presented to the Executive and the case is heard by a committee of the Council, *ex parte*. Upon this private, and necessarily prejudiced hearing of one side of the case, upon manufactured testimony, the man is pronounced innocent; the solemn judgment of the court, rendered upon a careful hearing of all the parties under the established forms and rules of law, is annulled, and the convict goes out on a pardon to renew his career of crime.

This is a statement, in brief, of a course that has been pursued in this State, until judges and prosecuting officers have been driven almost to the conclusion, that our courts for criminal business might as well be abolished. If the cases are to be finally tried in the Council Chamber, public justice requires that the trial shall be conducted with some regard to the forms and rules of law. This cannot be done without transferring the jurisdiction of the courts of justice to that department. That such jurisdiction should be exercised under the pardoning power, never could have been designed by those who framed the constitution. It tends to subvert public justice, to destroy all confidence in its administration in our criminal courts, and to encourage the commission of crime.

That these views are not peculiar to myself, I quote the following remarks, from the Report of one of my predecessors, the late Judge Emery, in which similar views are ably expressed:

"The laws of our State, compared with those of our sister States, and especially with those of other countries, are characterized by great mildness and manifest tenderness, towards the party accused. In the administration of criminal law, the lesson most important to be taught, perhaps, is the *certainty of punishment to ascertained guilt.* It may well be doubted, whether the subtleties and technicalities of the laws in criminal cases, have had a salutary influence in deciding on the question of guilt. The truth of the remark, almost reverenced as a canon of criminal law, that "it is better that ninety-nine guilty persons escape than that one innocent should suffer," is far from being self-evident, and has been questioned by eminent jurists. Taking the criminal code, however, as it exists with all its niceties and refinements, invented as the safeguards of innocence, in times when the law was fearfully severe, guilt cannot but often escape, while innocence can scarcely be said ordinarily to be in danger. But when guilt has been traced and detected, through all the mazes of legal subtlety, and the doubts which professional ingenuity can throw upon facts proved; when crime stands revealed in all its characteristic deformity, to the gaze of the world, it were weakness to arrest the salutary operations of law, and little short of cruelty to the community to rescue the criminal from the merited awards of retributive justice. With great deference, therefore, the suggestion is made, how far the prerogative of the Executive to pardon offenders should be exercised. Perfection belongs to nothing human Laws and judicial tribunals partake of the general infirmity. Convictions may be improperly obtained, although for reasons before hinted at, they must be of rare occurrence. When they should happen the Court, the prosecuting officer, nay, the jury pronouncing upon the guilt, would promptly furnish the facts that would insure correction. There may be cases, too, where facts ascertained subsequently to conviction, demonstrate the innocence of the party charged, or have a material bearing on the question. But when the facts have been fairly laid before a jury, the question of guilt properly settled and sentence awarded on the verdict, it is respectfully submitted, whether the great interests of the community are or are not promoted by the interposition of the pardoning power. If the laws of our State be too highly penal, should not their severity be mitigated by milder enactments, rather than by arresting their operation? In most cases, courts are clothed with

a discretionary power, to award sentence 'according to the nature and aggravation of the offence,' and it is believed, that this discretion is exercised with great wisdom and judgment upon full knowledge of all the circumstances. How far better justice may be done or pardons be extended, understandingly and wisely, upon mere paper representations, and an *ex parte* hearing, where the interest is strong to suppress, create and distort facts, with no opposing party, and without recourse to the legitimate sources of information, whence all the facts might be obtained, is a question of some moment to the moral character and interests of our State.

Does or does not the frequency of pardons tend to multiply crimes? Will or will not the cool, calculating profligate, after balancing his chances of escape from defect of proof or through the meshes of legal technicality, even if these chances be against him, resolve upon the hazard, with the hope that when all other means fail, he shall be protected by the broad shield of executive clemency?"

The subject is earnestly commended to your attention; and it is suggested that some of the evils may be remedied by legislation.

In this connection I desire to call attention to the frequent commutation of sentence from State Prison to the County Jail. I understand this is in a measure compelled by the lack of sufficient accommodations at the Prison for the whole number of convicts. The effect of such commutation is bad in every respect; much more expensive for the State; injurious to the prisoner by keeping him in idleness, and for want of exercise; and evil in the effect of his association upon less hardened offenders who are committed to the jail.

A large amount is paid annually to secure the conviction of criminals. It is worse than thrown away if, after conviction, they are to avoid punishment altogether, or escape with but slight punishment. Crimes will increase: crimes *are* increasing; and nothing but the certainty of adequate punishment will check them.

It is poor economy to allow criminals to go unpunished, for the sake of saving the amount necessary to provide means for their punishment. To be obliged to pardon or commute the sentence of one prisoner, to make room for another, is beneath the dignity as well as fatal to the interests of the State.

I submit a statement of the criminal business done by me during the year.

# CASES IN THE LAW COURT,

*Argued previously to* 1863, *and not decided at the date of my last Report.*

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## Eastern District.

*Aroostook County.*

State *vs.* Inhabitants of Ashland. Indictment for defective highway. Dismissed from law docket.

*Piscataquis County.*

State *vs.* James Weymouth, jr. Assault and battery. On exceptions. Exceptions overruled. Judgment on the verdict.

## Middle District.

*Lincoln County.*

State *vs.* Benjamin W. Plummer.

State *vs.* Same.

Indictments for forgery. On demurrer. In both cases, demurrer sustained. Indictment adjudged bad.

State *vs.* Sumner Mayers. Liquor case. On exceptions. Exceptions overruled.

*Kennebec County.*

State *vs.* Job Roundy, appl't. Liquor case. On exceptions. Exceptions sustained. Judgment arrested.

State *vs.* Otis Roberts. Indictment for obtaining goods under false pretences. On demurrer. Demurrer sustained. Indictment adjudged bad.

## Western District.

*York County.*

State *vs.* Inhabitants of Biddeford. Indictment for defect in highway, by means of which a person lost his life. Exceptions overruled. Judgment on the verdict.

*Oxford County.*

State *vs.* Ephraim Gilman. On exceptions. Exceptions overruled. Judgment on the verdict.

# CASES IN THE LAW COURT,

*Argued during the past year.*

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## Eastern District.

### *Washington County.*

State *vs.* Freeman Kinsley. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* William Merritt. On a motion to set aside the verdict as being against the weight of evidence. Dismissed from Law Docket.

### *Penobscot County.*

State, on libel of Henry B. Farnham, *vs.* Certain Intoxicating Liquors and George G. Hathaway, claimant and appellant. Search and seizure case.

This case has been before the Law Court for *three years in succession*. In 1862, it was before the Court on exceptions to the instructions of the Judge, etc. Those exceptions were overruled. This year, it came up on exceptions to the order of the Judge at *nisi prius* ordering judgment on the verdict. It was for the third time elaborately argued. The exceptions were overruled and judgment ordered. I learn that the order has been carried into effect, and therefore, that the ingenuity of the able counsel in defence, will not be likely to get the case again before the Court.

State *vs.* Washington I. Martin. Indictment for polygamy. On exceptions to overruling a demurrer to the indictment. Exceptions overruled. Indictment adjudged good.

State *vs.* Bowman Herrin. Arson. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Eliza Emery, appl't. Complaint for being a common

drunkard. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Alfred Stetson. Common seller. On exceptions. Exceptions overruled. Indictment adjudged good. Judgment for the State.

State *vs.* John McCann, appl't. Search and seizure. On exceptions. Exceptions overruled. Complaint adjudged good. Judgment for the State.

State *vs.* Charles Dolan. Common seller. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* William Corliss. Rape. On exceptions. Exceptions overruled. Judgment on the verdict.

State, *scire facias, vs.* Adonijah Webber. On exceptions. Exceptions overruled. Declaration adjudged good. Judgment for the State. Defendant to be heard in Chancery at *Nisi Prius*.

State *vs.* David F. Elliott. Common seller. On exceptions. Exceptions overruled. Indictment adjudged good. Judgment for the State.

State *vs.* Charles C. Johnson and al. Common sellers. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Eugene McCarty. Common seller. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Alfred Stetson. Common seller. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Charles Dolan. Common seller. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* David Tenney. Common seller. On demurrer. Demurrer overruled. Indictment adjudged good. Judgment for the State.

## Middle District.

### *Somerset County.*

State *vs.* Osgood D. Forbes. Larceny. On exceptions. Exceptions sustained. Verdict set aside. New trial granted.

State *vs.* Ephraim Dunlap. On demurrer to an indictment for perjury. Argued in writing. Demurrer overruled. Indictment adjudged good. By a decision in a civil case, however, this indictment cannot be sustained. The statute upon which it was indirectly founded, has been declared by the Court unconstitutional.

*Lincoln County.*

State *vs.* Michael P. Furlong. Common seller. On exceptions. Exceptions overruled.

State *vs.* same. Keeper of a drinking house and tippling shop. On exceptions. Exceptions overruled.

*Kennebec County.*

State *vs.* Benjamin Porter and als. Riot. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Charles T. Somes, appl't. Search and seizure. On exceptions. Exceptions overruled. Judgment on the verdict.

State, by libel, *vs.* Certain Intoxicating Liquors and S. D. Clay, claimant and appl't. On motion to set aside the verdict as being against evidence. Dismissed from Law Docket.

State *vs.* Benjamin Porter, appl't. Search and seizure. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Frederic A. Chase. Indictment for obtaining money under false pretenses. On demurrer. Demurrer sustained. Indictment quashed.

State *vs.* Thomas M. Stevens, appl't. Liquor case. On exceptions.

WESTERN DISTRICT.

*Franklin County.*

State *vs.* George Soule. Malicious mischief. On exceptions. Exceptions overruled. Judgment on the verdict.

*Androscoggin County.*

State *vs.* Thomas Hartley, appl't.

State *vs.* Michael M. Gannon, appl't.

Search and seizure cases. On exceptions, and motion in arrest of judgment. Exceptions and motion overruled in both cases. Among other questions raised, the respondents insisted that their licenses as retail dealers in liquors, under the laws of the United States, gave them the right to sell intoxicating liquors in violation of the laws of this State. But the Court held that these licenses gave them no such right.

*Cumberland County.*

State *vs.* Joseph W. Lamb. Arson. On exceptions and motion. Exceptions and motion overruled. Judgment on the verdict.

State *vs.* James Jones and als. Conspiracy, etc. On exceptions. Exceptions sustained. Verdict set aside. New trial granted.

State *vs.* John B. Hughes. Abortion. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Amanda Finnimore. Keeping house of ill fame. On exceptions. Exceptions overruled. Judgment on the verdict.

State *vs.* Mary Fountain. Keeping house of ill fame. On exceptions. Exceptions overruled. Judgment on the verdict.

# CAPITAL CASES,

*Which have been before the Court during the year.*

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ARoostook County.

State *vs.* Henry A. Dolly. Indictment for murder of his wife. His counsel interposed the plea of insanity, and upon my motion the Court ordered the prisoner into the custody of the Superintendent of the Insane Hospital for observation. In pursuance of this order he was committed to the Hospital, where, in a few days after his committal, he died of hemorrhage of the lungs.

KNOX COUNTY, APRIL TERM, 1863.

State *vs.* William Daniel Blake. Indicted for the murder of Freeman C. Patterson. He pleaded guilty. Upon examination, he was adjudged by the Court GUILTY OF MURDER IN THE FIRST DEGREE, and was sentenced *to be hung.*

State *vs.* Francis C. Spencer. Indicted for the murder of Richard Tinker, the Warden of the State Prison, within the precincts of the Prison. He, also, pleaded guilty. He was also adjudged GUILTY OF MURDER IN THE FIRST DEGREE, and sentenced *to be hung.*

OXFORD COUNTY, MARCH TERM, 1863.

State *vs.* Ephraim Gilman. The case was tried March Term 1862, and a verdict of GUILTY OF MURDER IN THE FIRST DEGREE rendered. The case was carried to the Law Court on exceptions, which were overruled and judgment ordered on the verdict. Accordingly at this term the prisoner was brought into court and sentenced *to be hung.*

State *vs.* Lawson Allen. Indicted for murder in endeavoring to produce abortion. The County Attorney, upon an examination of the evidence, "*nol pros'd*" as to the murder, and the respondent was admitted to bail.

WALDO COUNTY.

State *vs.* Daniel H. Wadleigh. Indicted for murder. I was not notified of the indictment. The case was tried and resulted in a verdict of "Guilty of manslaughter." From all I can learn of the case, this was the proper result. The indictment should have been for manslaughter.

WASHINGTON COUNTY, OCTOBER TERM, 1863.

State *vs.* Mary Elliott. Indicted for the murder of Ellen Elliott. In consequence of the two capital cases pending in Franklin county, I was unable to attend the trial of this case. It was very ably tried by CHARLES R. WHIDDEN, the County Attorney, and resulted in a verdict of GUILTY OF MURDER IN THE FIRST DEGREE. The counsel filed a motion in arrest of judgment, on the ground of some informality in drawing one of the grand jurors who found the indictment. The case was thereupon continued, to await the decision of the Law Court upon the motion. The same question has been several times before the Court, and has been uniformly decided against the respondent. The same result may be confidently relied upon in this case.

FRANKLIN COUNTY, OCTOBER TERM, 1863.

State *vs.* Jesse Wright. Indicted for the murder of Jeremiah Tuck. After a trial of two days, the jury rendered a verdict of GUILTY OF MURDER IN THE FIRST DEGREE. The counsel for the prisoner filed exceptions to certain rulings and instructions of the presiding Judge, and the case was marked "Law," and continued to await the decision of the Law Court. These exceptions also raise questions as to the regularity of the drawing of the grand jurors who found the indictment. I have carefully examined them, and in my opinion they cannot be sustained.

State *vs.* Lawrence Doyle. Indicted for the murder of Lura Vellie Libbey. The trial commenced on the twenty-ninth day of October and continued eight days (exclusive of Sunday.) It resulted in a disagreement of the jury.

The annals of criminal jurisprudence hardly present such an-another case of horrible and atrocious murder. A little girl, not ten years old, on her way to church, was savagely violated, and then brutally murdered. The details were so horrible that they

would not be credited, were they not proved by overwhelming evidence. Indeed, the commission of the crime by some one was fully conceded by the able counsel in defence. The question presented to the jury was, whether the prisoner was the guilty agent.

The crime caused an intense excitement throughout the county, and, it is believed, that the opinions of the citizens had been influenced, perhaps unduly, by various reports. It was difficult to obtain a jury, impartial and unbiased. It may be *more* difficult to obtain another jury, as all the evidence has been published in the local newspapers.

But I am so thoroughly convinced of the guilt of the prisoner, and that upon the evidence in the case, he ought to be convicted, that I advise that the case be prosecuted until a verdict be obtained.

It will be seen that NINE INDICTMENTS FOR MURDER have been before the Court during the year. But in addition, two persons have been committed to jail on the charge of murder; whose cases cannot come before the Court until next year. Every case in which indictments have been found, have been tried or otherwise disposed of, and yet my successor will have three capital cases on his hands at the beginning of his term!

During the year, also, one other murder has been committed. Two desperadoes, Grant and Knowles by name, committed various depredations in the county of Waldo. An officer, attempting to arrest them, was fired upon and severely wounded. Not satisfied with this, one of the villains repeatedly shot him after he had fallen. The officer, narrowly escaped with his life. Knowles and Grant took to the woods in Detroit, in Somerset County, and the citizens generally turned out for their capture. Three young men discovered traces of the ruffians, and were searching in the woods, when Grant and Knowles rose from the bushes and fired upon them at once, mortally wounding one of them, a young man by the name of Jenkins. The other two, however, bravely assailed them, and, after one of the most desperate encounters that ever happened in our State, succeeded in capturing them. But both were mortally wounded, Grant dying on the spot and Knowles in a few days after.

It will be seen that the criminal Law Docket is clear, with the exception of a single case. That was argued by me, but I have recently ascertained that probably the counsel in defence, who was to submit a written argument, borrowed the papers and has neg-

lected to return them. I have taken measures to have the papers put in the hands of the Court at an early day. This condition of the docket has been attained but rarely, if at all for many years.

Of the *thirty-five* cases argued the past year before the Law Court, *thirty-one* have been decided in favor of the State and three against it.

The comparative number of cases which have been before the Law Court during each of the past four years, may be seen from the following:

| Year. | Whole No. cases. | No. decided in favor of the State. | No. decided against State. |
|---|---|---|---|
| 1860, . . . | 66 | 61 | 5 |
| 1861, . . . | 50 | 48 | 1 |
| 1862, . . . | 45 | 42 | 3 |
| 1863, . . . | 35 | 31 | 3 |
| Total, . . | 196 | 183 | 12 |

# REPORTS OF COUNTY ATTORNEYS.

I give the usual abstracts from the reports of the County Attorneys.

The following Table exhibits the number of indictments and appeals pending Nov. 1, 1862, the number of indictments found and appeals entered during the year, and the number of indictments and appeals pending Nov. 1, 1863; and the crimes charged so far as the reports of the County Attorneys give them.

These reports, with two exceptions, have been furnished this year within the time required by law. In reference to the two not so furnished, it is proper to say that the delay was not the fault of the County Attorneys. Several of the reports are not accurate. The making of each report cannot require more than a few hours' time, while the making of the abstracts consumes as many days. It is certainly somewhat vexing to find that by a careless error (which I cannot correct) in some of the reports, that after all, the abstract does not present an *accurate* statement of the business. If the reports are worth making at all, they are worth being made *accurate.*

It will be seen by this table that there were 411 Indictments and 131 Appeals pending at the beginning of the year. But by the report last year, it appears that there were pending at the same time 380 Indictments and 125 Appeals. This is a large discrepancy; it is made up of several discrepancies between the reports of County Attorneys last year and their reports this year.

The whole number of Indictments found during the year is 475; of appeals entered, 203; total, 1,220.

*Seventy-eight* more indictments have been found, and *one* more appeal entered the past year than during the year before.

The number of indictments pending is 487; the number of appeals, 103.

## TABLE A.

| COUNTIES. | CASES. | CRIMES. | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Whole number. | Homicide. | Arson. | Perjury, &c. | Forgery and counterfeiting. | Compound larceny. | Larceny. | Burglary. | Robbery. | Rape. | Assault with felonious intent. | Assault and battery. | Affrays and riots. | Offences against chastity, Morality, &c. | Malicious mischief. | Cheating and conspiracies. | Defects in highway. | Nuisances. | Violation of liquor law. | Other offences. |
| ANDROSCOGGIN. | Indictments pending Nov. 1, 1862, | 13 | – | – | – | 2 | 1 | 1 | – | – | – | – | 1 | – | 1 | – | 1 | 2 | 2 | 1 | 2 |
| | Appealed cases pending Nov. 1, 1862, | 5 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 2 | 1 |
| | Indictments found during year, | 27 | – | – | – | 2 | 3 | 4 | – | – | – | 1 | 3 | – | 1 | – | 2 | – | – | 10 | 1 |
| | Appeals entered during year, | 39 | – | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | – | 34 | 3 |
| | Indictments pending Nov. 1, 1863, | 17 | – | – | – | 4 | 2 | 1 | – | – | – | – | 1 | – | 1 | – | 1 | 2 | – | 4 | 1 |
| | Appeals pending Nov. 1, 1863, | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 |
| AROOSTOOK. | Indictments pending Nov. 1, 1862, | 7 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | 1 | 2 | 2 | 1 | – |
| | Appeals pending Nov. 1, 1862, | 4 | – | – | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | 2 | – |
| | Indictments found during year, | 13 | 1 | – | – | 2 | – | 2 | – | – | – | 1 | 2 | – | – | – | 1 | – | 1 | – | 3 |
| | Appeals entered during year, | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 | – |
| | Indictments pending Nov. 1, 1863, | 13 | – | – | – | 1 | – | 2 | – | – | – | 1 | 2 | – | – | – | 1 | 1 | 2 | – | 3 |
| | Appeals pending Nov. 1 1863, | 2 | – | – | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | – | – |
| CUMBERLAND. | Indictments pending Nov. 1, 1862, | 46 | 1 | 3 | – | – | – | 3 | – | – | – | 2 | 3 | – | 3 | – | – | 3 | 1 | 24 | 3 |
| | Appeals pending Nov. 1, 1862, | 11 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 8 | 2 |
| | Indictments found during year, | 59 | 1 | 2 | – | 4 | 10 | 20 | 1 | – | – | – | 1 | – | 7 | 1 | 2 | 1 | – | 8 | – |
| | Appeals entered during year, | 10 | – | – | – | – | – | 1 | – | – | – | – | 2 | – | – | – | – | – | – | 6 | 1 |
| | Indictments pending Nov. 1, 1863, | 25 | 1 | 2 | – | 2 | 2 | 2 | – | – | – | 1 | 2 | – | – | – | – | 1 | – | 10 | 2 |
| | Appeals pending Nov. 1, 1863, | 3 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 3 | – |
| FRANKLIN. | Indictments pending Nov. 1, 1862, | 13 | 1 | – | 1 | – | – | 7 | – | – | – | – | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 3 | – |
| | Appeals pending Nov. 1, 1862, | 2 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 2 |
| | Indictments found during year, | 13 | 2 | – | – | – | – | 5 | – | – | – | – | 1 | – | 1 | – | 1 | 3 | 2 | 2 | – |
| | Indictments pending Nov. 1, 1863, | 21 | 3 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 4 | – |
| | Appeals pending Nov. 1, 1863, | 1 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 1 |

| | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| HANCOCK. | Indictments pending Nov. 1, 1862, | 13 | – | 2 | – | – | 2 | 2 | – | – | – | – | 1 | – | – | 1 | – | 3 | – | 1 | – |
| | Indictments found during year, | 6 | 1 | – | – | 1 | – | – | – | – | – | 1 | 2 | – | – | – | – | 1 | – | – | 1 |
| | Appeals entered during year, | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – |
| | Indictments pending Nov. 1, 1863, | 15 | 1 | 2 | – | 1 | 2 | 2 | – | – | – | – | 2 | – | – | 1 | – | 3 | – | – | 1 |
| | Appeals pending Nov. 1, 1863, | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – |
| KENNEBEC. | Indictments pending Nov. 1, 1862, | 21 | – | – | – | 2 | – | – | – | – | – | – | 4 | – | – | – | 3 | 1 | 1 | 7 | 2 |
| | Appeals pending Nov. 1, 1862, | 20 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 10 | 4 |
| | Indictments found during year, | 20 | – | 1 | – | 2 | – | 4 | 1 | – | – | – | 3 | – | 6 | – | 2 | – | – | – | 1 |
| | Appeals entered during year, | 57 | – | – | – | – | – | 4 | – | – | – | – | 3 | – | 5 | – | – | – | – | 35 | 10 |
| | Indictments pending Nov. 1, 1863, | 19 | – | – | – | 1 | – | – | 1 | – | – | – | 2 | – | 5 | – | 1 | – | – | 7 | 2 |
| | Appeals pending Nov. 1, 1863, | 17 | – | – | – | – | – | 1 | – | – | – | – | 2 | – | – | 1 | – | – | – | 11 | 2 |
| KNOX. | Indictments pending Nov. 1, 1862, | 44 | – | – | – | – | – | 4 | – | – | – | 1 | 4 | – | – | – | – | 4 | – | 31 | – |
| | Appeals pending Nov. 1, 1862, | 14 | – | – | – | – | – | – | – | – | – | – | 6 | – | – | 1 | – | – | – | 5 | 2 |
| | Indictments found during year, | 37 | 2 | – | – | – | – | 1 | – | – | – | 1 | 2 | – | – | – | – | – | – | 30 | – |
| | Appeals entered during year, | 3 | – | – | – | – | – | – | – | – | – | 1 | 1 | – | – | 1 | – | – | – | – | – |
| | Indictments pending Nov. 1, 1863, | 44 | – | – | – | – | – | 1 | – | – | – | – | 2 | – | – | – | – | 4 | – | 37 | – |
| | Appeals pending Nov. 1, 1863, | 14 | – | – | – | – | – | – | – | – | – | – | 8 | – | – | 1 | – | – | – | 5 | – |
| LINCOLN. | Indictments pending Nov. 1, 1862, | 21 | – | – | – | – | – | 1 | 1 | – | – | – | 1 | 1 | – | – | 3 | 2 | – | 8 | 4 |
| | Appeals pending Nov. 1, 1862, | 8 | – | – | – | – | – | – | – | – | – | – | 3 | – | – | – | 1 | – | – | 3 | 1 |
| | Indictments found during year, | 61 | – | 1 | – | – | – | 11 | – | – | – | – | 9 | – | 1 | – | – | – | 4 | 33 | 2 |
| | Appeals entered during year, | 5 | – | – | – | – | – | 1 | – | – | – | – | 2 | – | – | – | – | – | – | – | 2 |
| | Indictments pending Nov. 1, 1863, | 48 | – | 1 | – | – | – | 10 | – | – | – | – | 9 | 1 | – | – | 2 | 1 | 4 | 18 | 2 |
| | Appeals pending Nov. 1, 1863, | 5 | – | – | – | – | – | 1 | – | – | – | – | 3 | – | – | – | – | – | – | – | 1 |
| OXFORD. | Indictments pending Nov. 1, 1862, | 18 | – | – | – | – | – | 3 | – | – | – | 1 | 1 | – | – | – | 1 | 6 | – | 5 | – |
| | Appeals pending Nov. 1, 1862, | 2 | 1 | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | – | – | – |
| | Indictments found during year, | 13 | – | – | 3 | – | – | 5 | – | – | – | – | – | – | 2 | – | 1 | 1 | – | 2 | – |
| | Appeals entered during year, | 2 | 2 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 2 | – |
| | Indictments pending Nov. 1, 1863, | 17 | – | – | – | – | – | 4 | – | – | – | 1 | 1 | – | 1 | – | 2 | 3 | – | 3 | – |
| | Appeals pending Nov. 1, 1863, | 2 | 2 | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – |
| PENOBSCOT. | Indictments pending Nov. 1, 1862, | 60 | – | 1 | 1 | 5 | – | 10 | – | – | 1 | – | 10 | – | 8 | 2 | 4 | 4 | – | 12 | 2 |
| | Appeals pending Nov. 1, 1862, | 28 | – | – | – | – | – | 5 | – | – | – | – | 20 | – | – | – | – | – | – | 3 | – |
| | Indictments found during year, | 81 | – | 2 | – | 2 | 9 | 18 | 1 | – | – | 1 | 18 | 1 | 3 | 3 | 2 | 3 | – | 10 | 3 |
| | Appeals entered during year, | 39 | – | – | – | – | – | 6 | – | – | – | – | 25 | – | 4 | – | – | – | – | 4 | – |
| | Indictments pending Nov. 1, 1863, | 55 | – | 1 | 1 | 5 | 3 | 8 | – | – | – | – | 8 | 1 | 3 | 2 | 3 | 6 | – | 12 | 2 |
| | Appeals pending Nov. 1, 1863, | 20 | – | – | – | – | – | 4 | – | – | – | – | 10 | – | 2 | – | – | – | – | 4 | – |
| PISCATAQUIS. | Indictments pending Nov. 1, 1862, | 14 | – | 1 | – | – | – | 1 | – | – | – | – | 3 | – | – | – | – | 6 | 1 | 1 | 1 |
| | Appeals pending Nov. 1, 1862, | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – |
| | Indictments found during year, | 6 | – | – | – | – | – | – | – | – | – | 1 | 3 | – | – | – | – | 1 | – | – | 1 |
| | Appeals entered during year, | 1 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | – | – |

## TABLE A. (CONTINUED.)

| COUNTIES. | CASES. | CRIMES. | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Whole number. | Homicide. | Arson. | Perjury, &c. | Forgery and counterfeiting. | Compound larceny. | Larceny. | Burglary. | Robbery. | Rape. | Assault with felonious intent. | Assault and battery. | Affrays and riots. | Offences against chastity, morality, &c. | Malicious mischief. | Cheating and conspiracies. | Defects in highway. | Nuisances. | Violation of liquor law. | Other offences. |
| SAGADAHOC, | Indictments pending Nov. 1, 1863, | 10 | – | 1 | – | – | – | – | – | – | – | – | 3 | – | – | – | – | 5 | – | – | 1 |
| | Appeals pending Nov. 1, 1863, | 7 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 5 | 2 |
| | Indictments pending Nov. 1, 1862, | 2 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 2 | – |
| | Appeals pending Nov. 1, 1862, | 13 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | 1 | – | – | – | 10 | 1 |
| | Indictments found during year, | 3 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 3 | – |
| | Appeals entered during year, | 13 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | 1 | – | – | – | 9 | 2 |
| | Indictments pending Nov. 1, 1863, | 4 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 4 | – |
| | Appeals pending Nov. 1, 1863, | 48 | – | 1 | 3 | – | – | 5 | 1 | – | – | 1 | 1 | 1 | – | 3 | – | 9 | 3 | 19 | 1 |
| SOMERSET, | Indictments pending Nov. 1, 1862, | 2 | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 2 |
| | Appeals pending Nov. 1, 1862, | 18 | – | – | – | 1 | – | 6 | – | – | – | – | 5 | – | – | – | – | 1 | – | 4 | 1 |
| | Indictments found during year, | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – |
| | Appeals entered during year, | 63 | – | 1 | 3 | 1 | – | 8 | 1 | – | – | – | 2 | 1 | – | 3 | – | 10 | – | 3 | – |
| | Indictments pending Nov. 1, 1863, | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | – | 23 | – |
| | Appeals pending Nov. 1, 1863, | 16 | 1 | – | – | – | – | – | – | – | – | 1 | – | – | – | 1 | – | 8 | 1 | – | – |
| WALDO. | Indictments pending Nov. 1, 1862, | 9 | – | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | – | 7 | – |
| | Appeals pending Nov. 1, 1862, | 46 | 1 | 1 | – | – | 2 | 7 | – | – | – | 2 | – | – | – | 1 | 1 | – | – | 27 | 1 |
| | Indictments found during year, | 21 | – | – | – | – | – | 3 | – | – | – | – | 12 | – | – | 1 | – | – | – | 2 | 3 |
| | Appeals entered during year, | 47 | 1 | – | – | – | 2 | 4 | – | – | – | 2 | – | – | – | 2 | – | 1 | 1 | 27 | 1 |
| | Indictments pending Nov. 1, 1863, | 16 | – | – | – | – | – | – | – | – | – | – | 7 | – | – | – | – | 5 | – | 2 | 2 |
| | Appeals pending Nov. 1, 1863, | 34 | – | 1 | – | – | 5 | – | – | – | – | 1 | 2 | – | – | 2 | – | 1 | – | 18 | 1 |
| WASHINGTON. | Indictments pending Nov. 1, 1862, | 3 | – | – | – | – | – | – | – | – | – | – | 2 | – | – | – | – | – | – | 1 | – |
| | Appeals pending Nov. 1, 1862, | 40 | 1 | – | – | – | 2 | – | – | – | – | 2 | 1 | – | – | 2 | – | 2 | – | 29 | 1 |
| | Indictments found during year, | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Appeals entered during year, | 3 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 2 | – |
| | Indictments pending Nov. 1, 1863, | 42 | 1 | 1 | – | – | 1 | 2 | – | – | – | – | 1 | – | 4 | – | – | 2 | – | 29 | 1 |
| | Appeals pending Nov. 1, 1863, | 2 | – | – | – | – | – | – | – | – | – | – | 1 | – | – | – | – | – | – | 1 | – |
| York. | Indictments pending Nov. 1, 1862, | 36 | – | – | 1 | 1 | – | 5 | 2 | – | – | – | 4 | – | 1 | 1 | 4 | 4 | – | 10 | 3 |
| | Appeals pending Nov. 1, 1862, | 14 | – | – | – | – | – | 1 | – | – | – | – | 4 | – | – | – | – | – | – | 8 | 1 |
| | Indictments found during year, | 22 | – | – | – | 1 | – | 4 | 1 | – | – | 1 | 8 | – | 1 | 2 | – | – | – | 1 | 3 |
| | Appeals entered during year, | 18 | – | – | – | – | – | 2 | – | – | – | – | 10 | – | – | 1 | – | – | – | 4 | 1 |
| | Indictments pending Nov. 1, 1863, | 38 | – | – | – | – | – | 9 | 2 | – | – | – | 10 | – | 2 | 2 | 3 | 2 | – | 6 | 2 |
| | Appeals pending Nov. 1, 1863, | 15 | – | – | – | – | – | 1 | – | – | – | – | 8 | – | – | – | – | – | – | 4 | 2 |
| Total. | Indictments pending Nov. 1, 1862, | 411 | 4 | 9 | 6 | 8 | 8 | 38 | 5 | – | 1 | 9 | 35 | 3 | 18 | 8 | 18 | 57 | 12 | 149 | 21 |
| | Appeals pending Nov. 1, 1862, | 131 | – | – | – | – | – | 6 | – | – | – | – | 42 | 2 | – | 1 | – | – | – | 57 | 15 |
| | Indictments found during year, | 475 | 11 | 7 | – | 15 | 26 | 89 | 4 | – | – | 10 | 58 | 1 | 26 | 7 | 11 | 11 | 6 | 146 | 19 |
| | Appeals entered during year, | 203 | – | – | – | – | – | 17 | – | – | – | 1 | 60 | 1 | 10 | 2 | 1 | – | – | 93 | 20 |
| | Indictments pending Nov. 1, 1863, | 487 | 9 | 9 | 4 | 17 | 12 | 50 | 4 | – | – | 5 | 47 | 4 | 20 | 8 | 15 | 48 | 9 | 189 | 20 |
| | Appeals pending Nov. 1, 1863, | 103 | – | – | – | – | – | 7 | – | – | – | – | 41 | 2 | 2 | 2 | – | – | – | 35 | 9 |

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The next table shows how these cases have been disposed of during the year, and the condition of those remaining on the Docket.

## TABLE B.

*Disposition of cases during the year, and condition of those not disposed of.*

| Counties. | Cases. | Disposition during year ending Nov. 1, 1863. | | | | | Condition at end of year. | | | Sentences. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Quashed. | "Nol pros'd" on payment of costs. | "Nol pros'd" or dismissed. | Conviction and sentence. | Acquitted. | Continued open. | Continued for sentence. | Continued marked "Law." | State Prison. | County Jail. | Reform School. | Fine, &c. | To be hung. |
| Androscoggin, | Indictments, | – | 6 | 9 | 6 | 2 | 16 | – | 1 | 1 | 2 | – | 2 | – |
| | Appeals, | 3 | 5 | 2 | 33 | – | 1 | – | – | – | – | – | 33 | – |
| Aroostook, | Indictments, | – | – | 5 | 2 | – | 12 | – | 1 | – | 1 | – | 2 | – |
| | Appeals, | 1 | – | 1 | – | 1 | 2 | – | – | – | – | – | – | – |
| Cumberland, | Indictments, | – | 1 | 36 | 42 | 1 | 16 | 8 | 1 | 18 | 12 | 4 | 10 | – |
| | Appeals, | 2 | – | 5 | 11 | – | 3 | – | – | – | – | – | 6 | – |
| Franklin, | Indictments, | – | – | 2 | 3 | – | 19 | – | 2 | – | – | – | 3 | – |
| | Appeals, | – | – | 1 | – | – | 1 | – | – | – | – | – | – | – |
| Hancock, | Indictments, | – | 1 | 3 | – | – | 12 | 2 | 1 | – | – | – | – | – |
| | Appeals, | – | – | – | – | – | 1 | – | – | – | – | – | – | – |
| Kennebec, | Indictments, | – | 5 | 7 | 6 | 4 | 12 | 6 | 1 | – | – | – | 6 | – |
| | Appeals, | – | 18 | 10 | 21 | 9 | 10 | 4 | 3 | – | 5 | – | 17 | – |
| Knox, | Indictments, | – | – | 4 | 8 | 3 | 22 | 10 | 12 | – | 2 | – | 4 | 2 |
| | Appeals, | – | – | 2 | – | 1 | 14 | – | – | – | – | – | – | – |
| Lincoln, | Indictments, | – | 19 | 4 | 9 | 1 | 35 | 8 | 5 | – | 2 | – | 7 | – |
| | Appeals, | – | – | 6 | 1 | – | 5 | – | – | – | – | – | 1 | – |
| Oxford, | Indictments, | – | 9 | – | 5 | – | 17 | – | – | 4 | – | – | – | 1 |
| | Appeals, | – | 1 | – | – | – | 2 | – | – | – | – | – | – | – |
| Penobscot, | Indictments, | – | 20 | 24 | 36 | 1 | 41 | 11 | 3 | 14 | 5 | 1 | 15 | – |
| | Appeals, | – | 12 | 10 | 25 | – | 10 | 10 | – | – | – | – | 25 | – |
| Piscataquis, | Indictments, | – | – | 6 | 3 | – | 10 | – | – | – | – | – | 3 | – |
| | Appeals, | – | 1 | – | 1 | – | – | – | – | – | – | – | – | – |
| Sagadahoc, | Indictments, | – | 8 | – | 1 | 1 | 6 | 7 | – | – | – | – | 1 | – |
| | Appeals, | – | – | 1 | – | – | 2 | 2 | – | – | – | – | – | – |
| Somerset, | Indictments, | – | – | – | 10 | 1 | 40 | 20 | 3 | 4 | 5 | – | 1 | – |
| | Appeals, | – | – | – | – | – | – | – | – | – | – | – | – | – |
| Waldo, | Indictments, | – | 5 | – | 4 | 6 | 29 | 18 | – | 2 | 1 | – | 2 | – |
| | Appeals, | – | 5 | 9 | – | – | 16 | – | – | – | – | – | – | – |
| Washington, | Indictments, | – | 5 | 8 | 18 | – | 19 | 22 | 1 | 4 | 4 | – | 11 | – |
| | Appeals, | – | 2 | – | – | 1 | 1 | – | 1 | – | – | – | 1 | – |
| York, | Indictments, | – | 1 | 17 | 4 | – | 34 | 4 | – | 2 | 1 | – | – | – |
| | Appeals, | – | – | 8 | – | – | 15 | – | – | – | – | – | 1 | – |
| Total, | Indictments, | – | 80 | 125 | 156 | 20 | 340 | 116 | 31 | | | | | |
| | Appeals, | 6 | 44 | 55 | 92 | 12 | 83 | 16 | 4 | | | | | |
| | Sentences in '63, | | | | | | | | | 49 | 40 | 5 | 150 | 3 |
| | do. in 1862, | | | | | | | | | 38 | 36 | 3 | 108 | 2 |
| | do. in 1861, | | | | | | | | | 65 | 36 | 8 | 85 | 2 |
| | do. in 1860, | | | | | | | | | 42 | 46 | 4 | 110 | – |
| | | | | | | | Total for 4 years, | | | 194 | 158 | 20 | 453 | 7 |

Six appeals were quashed; eighty indictments and forty-four appeals were "nol pros'd" or dismissed; there were one hundred and fifty-six convictions and sentences on indictments, and ninety-two on appeals; and there were twenty acquittals on trials of indictments, and twelve on trials of appeals.

There have been sixty-three more convictions than the year previous—twenty on indictments, and forty-three on appeals.

There are pending four hundred and eighty-seven indictments, (one hundred and seven more than last year,) of which one hundred and sixteen stand continued for sentence, and thirty-one marked "Law;" and one hundred and three appeals, of which sixteen stand continued for sentence, and four marked "Law."

While the number of cases before the Law Court have decreased, yet the number of convictions has materially increased.

The sentences to State Prison are:

For adultery, two—each for two years; for abortion, one—for one year; for arson, four—one for *life*, one for six years, one for five years, and one for two years; for felonious assault, four—one for four years, one for three years, one for two years, and one for one year; for burglary, one—for one year; for forgery, one—for four years; for larceny, compound larceny, breaking and entering with intent to steal, receiving stolen goods, &c., thirty-two—two for six years, (one as a common thief, and the other three on indictments,) three for five years, two for four years, two for three years, (one on two indictments,) eleven for two years, (one on two indictments,) and eight for one year; for obtaining goods under false pretences, one—for two years; for keeping house of ill-fame, (second conviction,) one—for two years; for rape, one—for *life*; for robbery, one—for five years.

Omitting from the calculation those sentenced for *life*, the average sentence is about two and one-half years. The Prison is filled, on an average, in less than two years. So that about *one in four* of those sentenced to Prison must be pardoned or have their sentence commuted! or a greater proportion pardoned after they have served out a part of their sentence.

One boy has been sentenced to the Reform School during his minority, for manslaughter.

By section 10, chapter 135, of the Revised Statutes, a person committed to jail for non-payment of fine and costs, may be liberated by the sheriff, after thirty days from his commitment, by

giving his note for the amount due, &c. These notes are rarely, if ever, collected. It seems, therefore, that the length of the imprisonment should be in proportion to the amount of the fine. I am led to make this suggestion by the fact that during the past year a man convicted of manslaughter, (committed, as it seems to me, under circumstances the reverse of palliating,) was sentenced to pay a fine of five hundred dollars; failing to do this he was committed to jail, remained there thirty days, gave his note for the amount, and was discharged. A man fined five dollars for a simple assault, and unable to pay it, would be held in jail just as long.

Mr. Danforth, County Attorney of Kennebec county, complains that almost all cases tried before Justices and Police Courts, are appealed, and in almost every instance worthless bail is taken. The appeals are not prosecuted; the respondents have, in the meantime, left the county, and the appeal must be dismissed, and the county pay the cost. It might tend to prevent this state of things, if magistrates taking insufficient sureties in such cases should be deprived of fees.

# REPORTS OF COUNTY TREASURERS.

The law of 1863 was overlooked by quite a proportion of the County Treasurers, until their attention was called to it by a notice from me. This Report is delayed in consequence of it. In some cases they have given the amount of costs *allowed*, instead of the *amount actually paid out*, without regard to the time when allowed.

*The following Table embraces the information derived from the Reports of County Treasurers.*

| Counties. | Amount actually paid for costs in S. J. C. | Amount actually paid on costs allowed by the county commissioners. | Amount actually paid for support of prisoners in jail, &c. | Amount paid jurors, &c. | Amount received from clerk of courts. | Amount received from judges of municipal courts and magistrates. | Amount received from jailers, &c. | Total expenses. | Total receipts. |
|---|---|---|---|---|---|---|---|---|---|
| Androscoggin, | 1,548 31 | 768 57 | 838 73 | 385 44 | 362 51 | 115 00 | 61 52 | 3,541 05 | 539 05 |
| Aroostook, | 407 96 | 84 81 | 23 62 | not given. | 95 77 | 48 00 | – | 516 29 | 143 77 |
| Cumberland, | 3,086 34 | 2,223 94 | 3,501 42 | * 1,335 04 | 2,593 12 | 1,025 34 | 512 90 | 10,146 74 | 4,131 36 |
| Franklin, | 1,452 63 | 356 91 | 125 75 | 309 46 | 197 86 | 8 00 | – | 2,244 75 | 205 86 |
| Hancock, | 759 17 | 486 80 | 324 19 | 252 85 | 100 00 | 67 00 | – | 1,823 01 | 167 00 |
| Kennebec, | 1,661 40 | 3,067 82 | 3,231 98 | 358 98 | 388 61 | 130 19 | 761 94 | 8,320 18 | 1,280 74 |
| Knox, | 657 20 | 510 52 | 444 06 | not given. | 117 87 | – | – | 1,611 78 | 117 87 |
| Lincoln, | 1,424 78 | 164 50 | 155 72 | 369 36 | 1,110 90 | 26 00 | 8 85 | 2,114 36 | 1,145 75 |
| Oxford, | 755 34 | 280 66 | 217 75 | 627 60 | 581 05 | 66 00 | 40 23 | 1,881 35 | 687 28 |
| Penobscot, | 2,339 35 | 1,007 40 | 3,665 59 | * 1,872 14 | 1,698 97 | 131 55 | 517 50 | 8,884 48 | 2,348 11 |
| Piscataquis, | 297 30 | – | – | 135 13 | 188 51 | – | – | 432 43 | 188 51 |
| Sagadahoc, | 298 30 | 715 78 | † | 238 14 | 172 12 | Incl'd'd in preceding item. | | 1,252 22 | 172 12 |
| Somerset, | 976 54 | † | 313 58 | 333 90 | 103 65 | 74 01 | – | 1,624 02 | 177 66 |
| Waldo, | 2,168 77 | 1,234 76 | 675 58 | 475 85 | 288 41 | Incl'd'd in preceding item. | | 4,554 96 | 288 41 |
| Washington, | 1,354 41 | 1,090 27 | 1,273 80 | 512 84 | 1,297 35 | 215 41 | 107 92 | 4,231 32 | 1,620 68 |
| York, | 1,300 48 | 2,942 71 | – | 469 74 | 8 89 | 186 84 | – | 4,712 93 | 195 73 |
| Total, | $20,488 18 | $14,935 45 | $14,791 77 | $7,676 67 | $9,305 59 | $2,093 34 | $2,009 93 | $57,892 07 | $13,408 88 |

* These items include the amounts paid to *traverse* jurors at criminal terms. In the other counties no terms are held exclusively for the trial of criminal cases.

† Included in preceding item.

This table shows a decrease in the costs during the past year, and an increase in the amount received from fines, etc.

I am satisfied that a still greater decrease might be made, if County Attorneys would so arrange their trials as to have witnesses in attendance in the shortest possible time, and would give their personal attention to keeping the fees of officers and witnesses within legal limits. They should also enforce the collection of fines and forfeited recognizances.

It is the testimony of all our judges, that the use of intoxicating liquors causes, at least, *nine tenths* of the crime in our State. Yet, sometimes, when a man is convicted for their illegal sale, his fine is remitted, or he is allowed to be discharged from imprisonment, on account of his family, etc. Before doing this, it might be well for prosecuting officers to inquire whether it is more just, more humane, and more for the interests of the State, to extend to his family the results of clemency, rather than to the families of his victims. Would it not be better to extend to him the same *mercy* (?) that he extends to his customers?

In consequence of the attention of our people being so anxiously directed to our national troubles, the laws for the suppression of intemperance have not been enforced save in a limited degree, for the past two years or more. The alarming increase of intemperance within that time, is the most convincing proof of the efficacy of our laws, when rigidly enforced.

In several counties the liquor sellers are prosecuted sufficiently to pay a large part of the costs of criminal prosecutions.

My experience satisfies me that, by a judicious enforcement of the law, this traffic might be stopped, and thus the criminal costs be very materially diminished, or if not stopped, enough be realized from fines to pay those costs. As the liquor sellers are the chief cause of those costs, they can not in justice complain, and the mass of the people certainly will not.

One feature in the proceedings in some counties is very injurious. After a man is convicted, the case is continued for judgment, *on his promise to quit the traffic.* I have found that these promises are very much like the oaths which the rebels take when captured by our forces. They are given *under duress*, and to be broken as soon as it can be done without its being discovered! It encourages others to violate the law, and does not restrain the one who gives the promise.

*Let the law take its course in every case when a conviction is obtained,* and we should hear very much less of the cry that "The Maine Law is a failure." I commend this subject to the attention of County Attorneys. I speak confidently, from an experience of more than ten years, that the failure of the law to suppress the sale of liquors is *not a fault of the law itself,* but on account of a *failure to give it a thorough, impartial and complete enforcement in the manner other laws are enforced.*

It is a general rule, that, a relaxation in the enforcement of law against criminals, is *cruelty* instead of *kindness.* It may be hard, in particular cases, but the community should not suffer to save an individual from the consequences of his own willful and illegal acts.

All which is respectfully submitted.

JOSIAH H. DRUMMOND, *Attorney General.*