

MAINE STATE LEGISLATURE

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Public Documents of Maine:

BEING THE

ANNUAL REPORTS

OF VARIOUS

PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEARS

1870-71.



AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1871.

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1870.



AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1870.

REPORT.

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

I have the honor to submit the following as my report for the official year ending October 31, 1870 :

The Attorney General is required by law to suggest in his report such changes and improvements in the criminal law as seem to him needful for the more effectual administration of justice. In compliance with this law, I submit for your consideration and that of the Legislature the suggestions which follow, and which are deemed of importance.

I. In the recent trial at Augusta of Edward H. Hoswell for a capital offence, there was presented the singular spectacle of a defence founded upon the allegation of adultery on the part of defendant's wife with the deceased, where the defendant testified in his own behalf and yet was enabled by the provisions of law to object to his wife being a witness and to close her mouth when she offered to testify. As he had killed the only other witness present, he had matters at the trial very much his own way so far as direct testimony was concerned. A scene like that was well calculated to cast serious reproach upon the administration of justice ; so much so that the possibility of its recurrence ought to be prevented, if it can be done with safety to other interests. The principles of public policy which forbid that husband and wife should testify against each other in ordinary matters are too well known to need mention. Whether the rule now existing was originally founded upon wise reasons has been seriously doubted, and since in this State parties to the cause have been allowed to testify it may well be questioned whether the interests of justice do not require a further enlargement of the means of arriving at the truth. But whatever may be thought about the general subject, it seems clear that allowing the husband by his own testimony to base his defence upon the alleged criminality of his wife and then refusing her testimony can hardly conduce either to the

increase of domestic harmony or the furtherance of truth and righteousness. I am well aware how unsafe it is to legislate under the influence of special cases, but deem it my duty to call attention to the subject.

II. PEREMPTORY CHALLENGES IN CAPITAL CASES.—As the law now stands, the prisoner accused of a capital crime has eleven peremptory challenges, and the State but one. In former times there existed good reasons for this condition of things, inasmuch as the government then exercised great influence over the selection of the men from whom a jury must be impanelled to try the cause. At the present time the list is made up in a manner as free from the control of the prosecution as of the defence, and the reason of so great a difference in the number of challenges no longer exists. The number of challenges ought not to be greater than at present, but they ought to be more equally distributed.

III. RECOGNIZANCES.—The attention of the Legislature has been repeatedly called to the manner in which recognizances are taken, and to the state of the law relating to them. In all cases where the offence is bailable, the accused may release himself from custody by giving bond with due sureties for his appearance at trial, and if convicted, to receive sentence. His sureties are his keepers, and if they are responsible men, bound in a sum sufficiently large, the appearance of the accused when demanded is reasonably certain. If they are irresponsible and worthless men, the accused may escape, justice be defeated, and the State have not even the small consolation of being a few dollars richer by the transaction. When so much obviously depends upon the character and ability of sureties on a recognizance, it would naturally be thought that every precaution would be taken to prevent imposition. But the reverse is the case. Any two justices of the peace which the accused may select can pass upon the sufficiency of his sureties, and in any place where no justice of the Supreme Court resides, and that court is not in session, may even reduce in secret the bail which the committing magistrate has fixed in public. This evil can be easily remedied. The Attorney General who preceded me, Mr. Frye, recommended that the power over bail be taken from justices of the peace and lodged in commissioners to be appointed in each county by the court. If this cannot be done, the County Attorney ought at least to have due notice, and be allowed and required to choose one of the justices. In Cumberland county the Superior Court Judge is a resident of Portland, and his court

is in session over nine months in the year. In that county there seems to be no excuse for allowing duties so important to be devolved upon any two justices who may happen to be selected by the prisoner.

Even after a recognizance has been taken, with sureties good and sufficient, it is construed with so much strictness by the courts, that the result of a suit is in too many instances a matter of great uncertainty. This is not as it should be. If men voluntarily take upon themselves responsibilities, there is no reason why they should not be made to meet them fully. In this connection I submit part of the letter of the County Attorney of Penobscot county, which accompanied his report to me: "It is generally understood that entering into recognizance in criminal cases creates a lien on the real estate of bail. There was an old Massachusetts statute to that effect, but I think now no such lien is created. Would it not be well to have a statute to that effect, providing also that to make the lien valid, a record should be made in the Registry of Deeds, in book of attachments, of the names of parties entering into criminal recognizances, and the amounts? There are so many ways in which bail avoid their liability, that they should be held up more strictly, and know that there is some liability incurred when they become sureties." It may not be improper for me to add that the ability and experience of Mr. Stetson entitle any recommendations of his to great weight.

In order to present with definiteness the legislation proposed, I annex on page 19 the draft of a bill embodying the changes deemed useful.

IV. OTHER MATTERS.—The County Attorney of Oxford county states that he "has been twice compelled to continue or *nol pros.* indictments, on account of the material witness being bought up or hired to leave the State. There is now no penalty imposed by statute *on the one hiring or aiding*, though the witness may be punished," and suggests that a statute imposing a penalty be enacted.

The County Attorney of Washington county recommends the repeal of chapter 69, public laws of 1867, and that a fixed rate be established by law for aids employed by officers in serving criminal process, board of prisoners in custody awaiting examination, &c., and that all extra allowances should be made in open court. The attention of the Legislature was invited to this subject by my predecessor in his last report.

CIVIL SUITS.

State of Maine vs. B. D. Peck and Bondsmen. This case, when I entered upon the duties of the office, was pending before the Supreme Court on a question of pleading. It was argued before the Law Court in July last, in writing, and the questions raised have not yet been decided. By a resolve of the Legislature of 1869 it was referred to Anson P. Morrill, Abner Coburn and Philip Eastman. As the defendants preferred to demur to the replication of the State, the matter has never come before them, and Mr. Eastman has since deceased.

The Penobscot Indians vs. the Veazie heirs. This suit was commenced by Attorney General Frye, in compliance with a resolve of the Legislature of 1868, in order to settle the title to the Grassy Islands in Penobscot river. After the adjournment of the last Legislature, Mr. Paine, counsel for the defendants, and myself agreed upon a statement of the facts upon which the case has been submitted to the consideration of the full court. The arguments were made at Bangor in June last, and the Court has the case under advisement.

CAPITAL CASES.

State vs. John F. Lawrence. At the February Term of the Criminal Court for the county of Penobscot, John F. Lawrence was tried for the murder of Elmira Atwood. The homicide was committed in the presence of witnesses, and was not denied at the trial. The defence was insanity. The case was tried by Attorney General Frye for the State and Knowles and Godfrew for the prisoner, and resulted in a verdict of murder in the first degree. Exceptions were filed to certain rulings of the presiding judge as to the law in cases where insanity is pleaded as a defence. These exceptions were argued last June at Bangor, and were overruled by the Court. Lawrence has since been sentenced to death.

State vs. John Fletcher. As I was not present at the trial, not having then entered upon the duties of the office, I transcribe the report of the County Attorney, P. H. Stubbs, Esq.

“At the March Term of the Supreme Judicial Court for this county, John Fletcher was indicted for the murder of John S. Tolman. At the same term the respondent was tried before Judge Tapley. The County Attorney, in the absence of the Attorney

General, was very ably assisted by Hon. Nathan Webb. It appeared that the respondent, as constable of the town of New Sharon at the time of the homicide, authorized by a warrant, was endeavoring with his posse to arrest John S. Tolman, Tolman resisted, and as was alleged (but denied) assaulted the respondent in the fight with a large fire shovel, and the respondent, to save his own life, fired at and wounded Tolman with a revolver. The wound proved fatal.

“There was a great conflict of testimony. The respondent was very ably defended by his counsel, Hon. William P. Frye and Hon. Samuel Belcher, and after a trial continuing about six days, was acquitted.”

An account of the trial of Edward H. Hoswell, already alluded to, belongs to the report of the next year.

CRIMINAL CASES IN THE LAW COURT.

EASTERN DISTRICT.

Penobscot County.

State vs. William N. Baker. Assault with intent to kill. Exceptions overruled.

State vs. Joseph Durgin. Search and seizure.

State vs. Edward Fanning. Common seller.

State vs. George Hines. Search and seizure.

State vs. George H. Burnham. Common seller.

State vs. George H. Burnham. Search and seizure.

State vs. Owen Gillogly. Common seller.

State vs. Foster S. Palmer. Common seller.

State vs. Peter Davis. Common seller.

State vs. Patrick Frowley. Common seller.

State vs. Peter Mercer. Common seller.

State vs. John McGuire. Common seller.

State vs. Wm. L. Stevens. Common seller.

State vs. Wm. D. McLaughlin et. als. Common sellers.

State vs. Thomas Munce. Common seller.

State vs. W. W. Fiske. Common seller.

State vs. Daniel C. Hurley. Common seller.

State vs. Walter Dennis. Common seller.

State vs. Fanny Jones. Common seller.

In all these cases exceptions were overruled.

State vs. Wm. Brennan. Continued by the Court.

Hancock County.

State vs. Charles Willey. Cheating by false pretence. Argued in writing by County Attorney.

State vs. Timothy Malronev. Common seller. Exceptions overruled.

State vs. Thomas Mahan. Tippling shop.

State vs. Thomas Mahan. Tippling shop.

State vs. Alexander J. Cameron. Common seller.

State vs. Timothy Bresnahan. Common seller.

State vs. Levi E. Norris. Common seller.

State vs. Sullivan D. Wiggin. Common seller.

State vs. Milliah Jordan. Common seller.

State vs. Milliah Jordan. Tippling shop.

State vs. Alexander Martin. Common seller.

State vs. George Bacon. Common seller.

State vs. Thomas Mahan. Common seller.

State vs. Levi Scott. Common seller.

State vs. Alexander J. Cameron. Tippling shop.

State vs. Timothy Bresnahan. Tippling shop.

State vs. Thomas Mahan. Common seller.

State vs. Timothy Mahoney. Tippling shop.

In all these cases exceptions were overruled.

MIDDLE DISTRICT—LAW TERM, 1870.

Knox County.

State vs. Ellen Crowley. Common seller.

State vs. William Crowley. Common seller.

State vs. Samuel W. Folsom. Common seller.

State vs. Ann Crawford. Common seller.

State vs. John S. Randlet. Common seller.

Kennebec County.

State vs. True Whittier. Obtaining signature by false pretences. Argued. Continued.

State vs. Wm. G. Kingsbury. Argued at Portland by agreement. Exceptions overruled.

State vs. Thomas J. Meservev. Claimant. Search and seizure. Exceptions overruled.

State vs. J. C. Robinson, scire facias on recognizance. Argued in writing.

State vs. John Osgood, scire facias on report. Continued.

State vs. Pat Maher.

State vs. Nicholas Maher.

State vs. Benjamin Johnson.

State vs. Thomas H. Springer.

State vs. John Dunphy.

State vs. James Kaley.

All liquor cases on demurrer. Exceptions overruled.

Somerset County.

State vs. Enos Gray. Tippling shop.

State vs. Enos Gray. Common seller.

State vs. John Haynes. Tippling shop.

State vs. John Haynes. Common seller.

State vs. John Haynes. Common seller.

State vs. Stephen D. Bourgress. Common seller.

State vs. Stephen D. Bourgress. Tippling shop.

State vs. William G. Hazeltine. Tippling shop.

State vs. William G. Hazeltine. Common seller.

State vs. John Haynes. Tippling shop.

Sagadahoc County.

State vs. John O'Leary. Liquor case. Argued in writing by County Attorney.

WESTERN DISTRICT—JULY TERM, 1870.

Oxford County.

State vs. John A. Holmes. Search and seizure. Exceptions overruled.

Androscoggin County.

State vs. Moses S. Hawes. Breaking and entering. Larceny. Exceptions overruled.

Cumberland County.

State vs. Israel Hatch. *Scire facias* on a recognizance. Argued. Continued.

State vs. Richard R. Robinson. Argued. Continued.

State vs. Abner Paine.

State vs. John F. Carney.

State vs. John F. Carney.

State vs. George F. Holbrook et als.

State vs. James McGlinchy.

State vs. Leonard Valentine.

State vs. Leonard Valentine.

State vs. Samuel Turner.

State vs. Samuel Turner.

State vs. Horace T. Kallock.

State vs. Levi Cram.

State vs. Oliver B. Howard.

State vs. Oliver B. Howard.

State vs. Nathaniel J. Davis.

State vs. Nathaniel J. Davis.

All liquor cases. Exceptions overruled.

State vs. William C. Robinson. Cheating by false pretences.
Exceptions overruled.

State vs. Intoxicating Liquors. Bolton, libellant. Exceptions
overruled.

State vs. Grand Trunk Railway of Canada. Occasioning death
by negligence. Argued. Continued.

State vs. John J. Mayberry. Robbery. Exceptions overruled.

State vs. John T. Smith. Admitting a minor to play at billiards
without consent of parent. Exceptions overruled.

State vs. Francis Murphy. Murder. Argued. Continued.

State vs. George M. Underwood et als. Gambling house. Sub-
mitted on briefs.

State vs. George M. Underwood et als. Exceptions overruled.

State vs. George M. Underwood et als. Exceptions sustained.
Indictment bad.

State vs. Portland, Saco and Portsmouth Railroad. Nuisance.
Obstructing highway. Argued. Continued.

State vs. David Crowley. Argued. Continued.

On the pages following will be found the tables which usually accompany the Attorney General's report. I have compiled them from the reports of the County Attorneys which have been sent me, with as much care as the limited time at my disposal has permitted. The law contemplates that all these reports should be

made the first of November, but most of them were not sent in this year till long after that time.

Respectfully submitted,

THOMAS B. REED, *Attorney General.*

TABLE A.

COUNTIES.	CASES.	CRIMES.																			
		Whole number.	Homicide.	Arson.	Perjury, &c.	Forgery and counterfeiting.	Compound larceny.	Larceny.	Burglary.	Robbery.	Repe.	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, 1869,	70					6	12		2		4		4			1	15	20	6	
	Appealed cases pending Nov. 1, 1869,	13						1				4							6	2	
	Indictments found January T., 1870,	39					1	9				1	1		1		2		21	3	
	Appealed cases entered Jan. T., 1870,	4						1				1							2		
	Indictments found April T., 1870,	54						3				2	1						45	3	
	Appealed cases entered April T., 1870,	8											1						7		
	Indictments found Sept. T., 1870,	37					3	1	1				2	1				1	29		
	Appealed cases entered Sept. T., 1870,	7												1					5	1	
	Indictments pending at end of year,	120					7	7	1		2		4	2	5		2		12	63	15
	Appealed cases pending at end of year,	20						2					2							16	
AROOSTOOK.	Indictments pending Nov. 1, 1869,	10						4			1	2					2			1	
	Appealed cases pending Nov. 1, 1869,	2						1				1									
	Indictments found February T., 1870,	5						2				1								2	
	Appealed cases entered Feb. T., 1870,	4						1				2			1						
	Indictments found Sept. T., 1870,	3						1			1									1	
	Appealed cases entered Sept. T., 1870,	7						2				2			2					1	
	Indictments pending at end of year,	5						2									1			2	
	Appealed cases pending at end of year,	4						2							1					1	
CUMBERLAND.	Indictments pending Nov. 1, 1869,	25	1		1		2	2		1		3					2	2	1	5	
	Appealed cases pending Nov. 1, 1869,	3																		3	
	Indictments found January T., 1870,	38	1				4	13			2	4					4	1		9	
	Appealed cases entered Jan. T., 1870,																				
	Indictments found May T., 1870,	51	1				3	6			2	7	1				1		12	13	5

T A R L E 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.	Malignant mischief.	Cheating and conspiracies.	Defects in highways.	Nuisances.	Violation of liquor law.	Other offences.		
KNOX.	Appealed cases entered Sept. T., 1870,	5	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	4	.....
	Indictments pending at end of year,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
LINCOLN.	Appealed cases pending at end of year,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending Nov. 1, 1869,	14	.....	.....	.....	.....	1	1	1	.....	3	.....	.....	.....	.....	.....	2	6	.....	.....	.....
	Appealed cases pending Nov. 1, 1869,	8	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	
	Indictments found April T., 1870,	2	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered April T., 1870.	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6
OXFORD.	Indictments found Oct. T., 1870,	13	.....	.....	.....	.....	1	1	.....	6	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	3	.....
	Appealed cases entered Oct. T., 1870,	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2
	Indictments pending at end of year,	26	.....	.....	.....	.....	1	3	2	.....	6	3	1	.....	2	.....	2	3	.....	.....	3	.....
	Appealed cases pending at end of year,	14	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	6	2
	Indictments pending Nov. 1, 1869,	16	.....	.....	.....	3	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10	.....
	Appealed cases pending Nov. 1, 1869,
	Indictments found March T., 1870,	28	1	2	23
PENOBSCOT.	Appealed cases entered Mar. T., 1870,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found Sept. T., 1870,	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Sept. T., 1870,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending at end of year,	15	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases pending at end of year,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
PENOBSCOT.	Indictments pending Nov. 1, 1869,	48	.....	.....	1	.....	1	8	.....	.....	.....	.....	.....	.....	5	1	4	6	1	.....	8	3
	Appealed cases pending Nov. 1, 1869,	30	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found Feb. T., 1870,	41	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Feb. T., 1870,	28	.....	.....	.....	.....	.....	9	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

	Indictments found August T., 1870,	50	.....	.....	.....	3	4	2	1	.....	9	.....	3	4	.....	2	.....	22	.....
	Appealed cases entered Aug. T., 1870,	66	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending at end of year,	51	.....	.....	.....	.....	4	1	.....	.....	10	.....	5	4	.....	6	.....	18	3
PISCATAQUIS.	Appealed cases pending at end of year,	12	1	1	.....	1	2	.....	.....	.....	2	.....	.....	.....	1	3	.....	.....	1
	Indictments pending Nov. 1, 1869,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Appealed cases pending Nov. 1, 1869,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Indictments found Feb. T., 1870,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Appealed cases entered Feb. T., 1870,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Indictments found Sept. T., 1870,	8	.....	1	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	4	.....	.....	2
	Appealed cases entered Sept. T., 1870,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Indictments pending at end of year,	19	1	1	1	.....	1	2	.....	.....	2	.....	.....	1	7	.....	.....	.....	3
	Appealed cases pending at end of year,	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
SAGADAHOC.	Indictments pending Nov. 1, 1869,	45	.....	.....	1	4	3	1	1	.....	1	1	.....	1	1	.....	1	30	.....
	Appealed cases pending Nov. 1, 1869,	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	6
	Indictments found April T., 1870,	12	.....	.....	1	.....	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Appealed cases entered April T., 1870,	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	4
	Indictments found August T., 1870,	4	.....	.....	.....	1	.....	.....	.....	.....	1	.....	.....	.....	1	.....	.....	.....	1
	Appealed cases entered Aug. T., 1870,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1
	Indictments pending at end of year,	31	.....	.....	1	3	5	1	1	.....	1	2	.....	2	2	.....	1	9	3
	Appealed cases pending at end of year,	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	3
SOMERSET.	Indictments pending Nov. 1, 1869,	63	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases pending Nov. 1, 1869,	15	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found Dec. T., 1869,	3	.....	2	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Dec. T., 1869,	1	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found March T., 1870,	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....
	Appealed cases entered Mar. T., 1870,	11	.....	.....	.....	.....	.....	.....	.....	1	1	.....	.....	.....	.....	1	.....	.....	8
	Indictments found Sept. T., 1870,	11	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Sept. T., 1870,	13	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	10
	Indictments pending at end of year,	13	.....	.....	.....	1	.....	.....	.....	.....	1	.....	.....	.....	.....	3	.....	.....	8
	Appealed cases pending at end of year,	9	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	8
WALDO.	Indictments pending Nov. 1, 1869,	66	.....	.....	.....	4	3	.....	.....	.....	3	.....	.....	.....	.....	13	1	42	.....
	Appealed cases pending Nov. 1, 1869,	16	.....	.....	.....	.....	.....	.....	.....	.....	5	.....	.....	3	.....	.....	.....	.....	7
	Indictments found Oct. T., 1869,	24	.....	.....	.....	1	1	.....	1	.....	3	.....	2	.....	1	8	1	5	1
	Appealed cases entered Oct. T., 1869,	13	.....	.....	.....	.....	.....	.....	.....	.....	8	.....	.....	1	.....	.....	.....	.....	4
	Indictments found January T., 1870,	13	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1	.....	2	.....	.....	9
	Appealed cases entered Jan. T., 1870,	3	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2
	Indictments found April T., 1870,	13	.....	.....	.....	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	.....	.....	4
	Appealed cases entered April T., 1870,	1	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending at end of year,	44	.....	.....	.....	6	.....	.....	.....	.....	2	.....	.....	1	18	1	.....	.....	16

TABLE B.

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

COUNTIES.	Indictments and Appeals.	Disposition during the year ending Nov. 1, 1870.					Condition at end of year.			Sentences.				
		Quashed	"Not pros'd" on payment of costs.	"Not pros'd" or dismissed.	Conviction and sentence.	Acquittals.	Continued open.	Continued for sentence.	Continued marked "Law."	State Prison.	County Jail and House of Correction.	Reform School.	Fines.	To be hung	Defaulted.
Androscoggin..	Indictments	1	14	1	64	20	4	18	47					
	Appeals	1	2	6	2	20								
Aroostook.....	Indictments	1	6	6	4	1	1	5	2					
	Appeals		8	1	4									
Cumberland ..	Indictments	1	13	11	70	12	34	6	42	19	24	134		
	Appeals		1		1	1		1	4					
Franklin	Indictments												1	
	Appeals													
Hancock	Indictments	4	4	11	2	5	5	19	3	1		7		
	Appeals	5		2		1		3						
Kennebec	Indictments	20	20	20	2	21	7	3	3	10	19			
	Appeals	30	21	24	1	17	9	9						
Knox	Indictments	4	4	7		5	2		2	3		5		
	Appeals			1		3		1						
Lincoln	Indictments	2	1			*40								
	Appeals		3											
Oxford	Indictments	18	6	10	10	5						4		
	Appeals													
Penobscot	Indictments	10	30	38	2	40	5	6	5	17	145	1		
	Appeals													
Piscataquis ...	Indictments			1		19						2		
	Appeals	1				1		1						
Sagadahoc.....	Indictments	1	20		3	19	10	2	2	3				
	Appeals	6	3	4	1	4	1							
Somerset	Indictments	4	69	12	1	5	4	13		5		8		
	Appeals													
Waldo	Indictments	1	34	12	11	4	16	26	2	4	1	4		
	Appeals													
Washington ..	Indictments	20	40	30	2	12	21		6	13	1	12		
	Appeals	8	22			1	1							
York	Indictments	9	43	9										
	Appeals	3	18	2										

* Court still in session when report was rendered.

Sentences from 1861 to 1870 inclusive.

YEARS.	State Prison.	County Jail.	Reform School.	Fine, &c.	To be hung.	Insane Asylum.
1870.....	54	93	3	174	1	.....
1869.....	87	96	6	148	2	2
1868.....	43	62	9	78	1	.....
1867.....	60	88	9	143	3	1
1866.....	104	94	6	150	1	1
1865.....	30	41	10	113	.....	.....
1864.....	60	32	5	109	3	.....
1863.....	49	40	5	150	3	.....
1862.....	38	36	3	108	2	.....
1861.....	65	36	8	85	2	.....
Total for ten years.....	546	618	64	1,258	18	4

Liquor cases disposed of in the Supreme Court.

COUNTIES.	No. of Cases.	Fines, &c., collected.	Committals
Androscoggin	49	\$5,041 00	10
Aroostook .....	.....	.....	.....
Cumberland—Superior Court.....	16	1,786 68	5
Franklin.....	.....	.....	.....
Hancock.....	4	100 00	4
Kennebec.....	18	1,275 00	.....
Knox.....	5	641 61	.....
Lincoln.....	.....	.....	.....
Oxford.....	8	409 00	.....
Penobscot.....	35	3,200 00	2
Piscataquis.....	1	25 00	.....
Sagadahoc.....	.....	.....	.....
Somerset.....	10	954 45	3
Waldo.....	6	450 00	.....
Washington.....	20	1,374 70	6
York.....	2	131 67	1
Total for 1870.....	174	\$15,398 11	31
Total for 1869.....	95	7,773 67	17

AN ACT RELATING TO RECOGNIZANCES AND TESTIMONY, AND TO CHALLENGES IN CAPITAL CASES.

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

SECTION 1. The supreme judicial court in session in each county shall appoint from the number of justices of the peace for that county, one or more commissioners whose duties and powers shall be as prescribed in the following section, and who shall hold office at the pleasure of the court.

SECT. 2. When a person is confined in a jail for a bailable offence or for not finding sureties on a recognizance, any commissioner appointed under this act on application may inquire into the case and admit any such person to bail, and exercise the same power as any justice of the supreme judicial court can, and may issue a writ of habeas corpus and cause such person to be brought before them for this purpose, and may take such recognizance.

SECT. 3. Section thirty-four of chapter ninety-nine of the revised statutes of eighteen hundred and fifty-seven is hereby repealed, but such repeal shall not take effect in any county until a commissioner or commissioners have been appointed under this act.

SECT. 4. Section nineteen, chapter thirty-three of the revised statutes of eighteen hundred and fifty-nine, is amended by striking from the seventh line the word "twice"; also by striking from the eighth line the word "third," and inserting instead thereof the word 'second.'

SECT. 5. Where by reason of mistake or other cause, any recognizance contains conditions unauthorized by law, the recognizance shall not thereby be avoided, but all its lawful conditions shall be held good and enforced.

SECT. 6. Entering into a recognizance for the appearance of an accused person in a criminal case shall create a lien on the real estate of the principal and sureties, but such lien shall not be valid unless within five days after such recognizance is taken, the magistrate before whom, or the clerk or recorder of the court before which, the recognizance is taken, shall file in the office of the registry of deeds, a certificate setting forth the names of the parties to the recognizance, the amount and date, and a record shall be made thereof in the book of attachments.

SECT. 7. Whenever in the trial of any action, civil or criminal, any party thereto offers himself or herself as a witness, the husband or wife of the party so voluntarily testifying may be called by the opposite party and required to testify in said trial.

SECT. 8. In capital trials the state is allowed five peremptory challenges, and each respondent is allowed six, and no more.