

MAINE STATE LEGISLATURE

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Public Documents of Maine :

BEING THE

ANNUAL REPORTS

OF THE VARIOUS

PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEARS

1872-73.

AUGUSTA :

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1873.

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1872.



AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1873.

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, 1872 :

In accordance with the requirments of law, I have in the two previous reports which I have made, submitted suggestions of changes and improvements in the criminal law of the State. These suggestions have met with an opposition which was anticipated. As the Legislature is constituted, members naturally turn to the lawyers of the House and Senate when any change of law is suggested, and feel disposed to accept their views. Unfortunately prosecuting officers are excluded by their office from membership, while the lawyers who are members having to do with criminal law only in the way of defending criminals are insensibly biased against anything which tends to render the punishment of their clients more certain. I say "*insensibly* biased" because that expresses the nature of the opposition. My experience leads me to believe that exceedingly few, if any members of the profession would consciously stand in the way of improvements in the law from any unsuitable motive. On the other hand, prosecuting officers are similarly liable to be influenced by their relations to criminals, yet of course not to so great an extent, for one who represents the State ought to be desirous only of justice, and after he has done his duty is no more interested in the result than any other citizen, and consequently has few temptations to mislead him. One great difficulty, therefore, in the way of change is this, when these questions are discussed, the Legislature, owing to the absence of one side hears only the disadvantages of the measure proposed and not its benefits. Those who are present can speak and everybody hears. A report nobody is likely to read if he can help it.

The suggestions referred to I do not purpose to discuss again, having fully stated my views and reasons in my two preceding

reports. I therefore content myself with recommending the passage of the following bill, with some explanations as to its purport:

AN ACT RELATING TO RECOGNIZANCES AND TESTIMONY.

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 is hereby repealed, but such repeal shall not take effect in any county until a commissioner or commissioners have been appointed under this act.

[As the law now stands, any two justices of the peace whom the prisoner may choose, can decide on the sufficiency of the sureties and in most cases on the amount of bail. There are now over two thousand justices of the peace in commission in this State. In so wide a field the prisoner's choice is unlimited, and it would be strange if he could not find in the proportion allotted to his county two persons whose inexperience or unfaithfulness would enable him to lay the foundation for a final escape from the penalties of crime. Moreover how can we expect recognizances to be technically correct when drawn by men who are so liable to be unacquainted with law? The system leads to great abuse and ought to be changed. The bill proposes to place the power in the hands of commissioners selected by the court.]

SECT. 4. 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.

[The object of this section is to prevent recognizances from being vitiated by mere technicalities.]

SECT. 5. Section eighty-two, chapter eighty-two of the revised statutes is hereby amended by striking out all after the word "witness" in the sixth line, so that the last clause of said section as amended shall read, "and the husband or wife of either party may be a witness."

SECT. 6. Section nineteen, chapter one hundred and thirty-four of the revised statutes is hereby amended by striking out all after the word "witness" in the twelfth line, so that the last sentence of said section shall read, "the husband or wife of the accused shall be a competent witness."

[The fifth and sixth sections provide that husband or wife may be witnesses against as well as for each other.]

Loss of life by negligence on the part of Railroad Companies.—By section 36, chapter 51 Revised Statutes, any railroad corporation, by whose negligence or carelessness, or by that of its servants or agents while employed in its business, in the exercise of due care and diligence, life is lost, forfeits not less than five hundred nor more than five thousand dollars, to be recovered by *indictment* found within one year, wholly to the use of his widow, &c. Under this section a number of cases have arisen this year and have been tried and argued. Enough has been developed to render it evident to me that the mode of securing compensation for loss of life, here given, is very unsatisfactory. There is no reason in the world why the State should concern itself with a private injury, further than to provide the parties with a remedy. Here the State provides the remedy and undertakes the suit, and does so in such a manner as to embarrass what is really an action for damages, with all the technicalities of the criminal law. So entirely incongruous do the intent of the law and its means of execution appear that the Supreme Court in *State vs. Grand Trunk Railroad Company*, 58 Me. 182, appear more than half inclined to regard indictment as one form of civil action. The remedy which ought to be provided, is an action on the case by the executor or administrator of the deceased, and the amount of damages left with the jury as in cases of injury not fatal. With damages for loss of life limited to five thousand dollars, it will be frequently cheaper for the railroad company to kill a man than to hurt him. Among other advantages, the party really in interest will have charge of his own case and will give to it a better care and attention than it is likely to receive under the present system, for he can choose his own counsel and is not confined to an official whom he would not prefer, and who may or may not take due interest in his case.

Of course any change made in the law should be guarded so that no existing rights may be disturbed.

CIVIL SUITS.

State of Maine vs. B. D. Peck and Bondsmen. The Legislature last winter discharged two of the sureties in this case, by resolve approved February 28, 1872. The two sureties, Neal Dow and John B. Cummings, have complied with the conditions of the resolve, and paid the money, ten thousand and fifty-two dollars and twenty-two cents. As the Legislature gave no directions in

regard to the suit, I have not felt at liberty to discontinue or dismiss it or make any other arrangement with the sueties, yet undischarged, the suit having originally been commenced by order of the Legislature. At the last law term of the Supreme Court the matters in relation to it still pending were argued, and the case is held by the Court for advisement.

State by information vs. the Portland and Kennebec Railroad Company. This is an information in the nature of a writ of *quo warranto* commenced in obedience to the requirements of chapter 51, section 30, Revised Statutes of 1857, to test the validity of the lease of the P. & K. Railroad to the Maine Central. It was argued in July, 1871. No decision has yet been rendered by the Court.

State vs. Boston and Maine Railroad. This is an information in the nature of a writ of *quo warranto* against the Boston and Maine Railroad, commenced because the road in a portion of York county was not located according to the provisions of the charter granted in 1871. The charter of 1871 authorized the company to extend its railroad "from some convenient point on its present road in Berwick or South Berwick within this State, thence through the towns of South Berwick, North Berwick, if necessary, Wells," &c. The company, however, has located and constructed its road in such way as not to enter the town of South Berwick at all. The case turns upon the construction of the charter. The company have answered the information and a demurrer has been filed on the part of the State. The case will probably be argued in July, 1873.

State vs. Cumberland and Oxford Canal. This was a proceeding commenced under chapter 233, Resolves of 1871, to determine whether or not the defendant corporation has forfeited its charter. The defendant has been ordered to answer at the January term, A. D. 1873.

CAPITAL CASES.

State vs. Elbridge W. Reed. The defendant in this case was convicted of murder in the first degree at the August term 1871, of the Supreme Court in Penobscot county. Hon. Wm. H. McCrillis, his counsel, filed exceptions and a motion for a new trial. The exceptions were argued before the full court and the motion for a new trial was argued before Judge Cutting at the same time, during the June term 1872, at Bangor. No decision of the case has yet reached me.

State vs. Joseph D. Smith. Smith was tried at Bangor during the February term, 1872, for the murder of Thomas S. Josselyn at Charleston. The prisoner knocked down the deceased with a club in the evening, very near his own house and robbed him while he was insensible from the effects of the blows. Josselyn lived but a few days. The case was a very clear one, and the jury found a verdict of murder in the first degree. The prisoner was defended by Hon. Abraham Sanborn.

State vs. Bernard Little. Bernard Little was tried at Rockland at the March term 1872, for the murder of Charles H. White, at Dix Island, on the second day of March. White was shot by the prisoner while the two were alone in the chamber of their boarding house. Immediately afterwards Little shot himself several times in the head and body. Owing to the weakness of the prisoner, arising from his injuries, the trial did not take place until April 2d. The defense was insanity. The past life of the prisoner was very fully investigated, and several experts, including Dr. Harlow and Dr. Fisher, testified that in their opinion the prisoner was insane at the time of committing the act. But the jury thought otherwise and returned a verdict of murder in the second degree. The verdict seemed to me to be a just and proper one. The prisoner was defended by D. N. Mortland, Esq., and Gen. F. S. Nickerson.

State vs. Edward S. Kirby. This case was tried in Washington county at Machias, October term 1872, before Judge Barrows. The crime took place at Forest City. The deceased was struck by the prisoner with a club in a manner which showed a most wanton disregard for the sanctity of human life. The deceased died in forty-eight hours. After the testimony was out, the jury found a verdict of manslaughter. The prisoner was sentenced to seven years in the State Prison. He was defended by Hon. Bion Bradbury, Hon. Chas. R. Whidden and Hon. George Walker.

CRIMINAL CASES IN THE LAW COURT.

EASTERN DISTRICT—LAW TERM, 1872.

Hancock County.

State vs. Charles Willey. Cheating by false pretence. Argued by County Attorney in 1870. Exceptions sustained. Indictment bad.

Penobscot County.

State vs. Field Murray, appellant. Search and seizure. Verdict, motion in arrest and exceptions. Exceptions overruled.

State vs. Elbridge W. Reed. Murder. On exceptions and motion for new trial.

State vs. Timothy Collins et al. Malicious mischief. Exceptions sustained.

State vs. Hannibal G. Coburn. Common seller. On demurrer and exceptions. Exceptions overruled. Judgment for the State.

State vs. Maine Central Railroad Company. Indictment for neglect to keep railroad in repair, thereby causing death of Wm. C. Percival an employee of the corporation. Settled and *Nol. Pros.* entered.

MIDDLE DISTRICT—LAW TERM, 1872.

Kennebec County.

State vs. Jacob Bolton. Felonious assault. Law on report. *Nol. Pros.*

State vs. Everett Howard, et al. Tippling shop. On demurrer. Exceptions overruled.

State vs. James Shaw. Attempt to commit arson. Law on demurrer. Argued, continued.

State vs. Levi Lashus. Nuisance on demurrer. Exceptions overruled.

State vs. Charles Love, appellant. Search and seizure. Exceptions overruled.

State vs. George M. Howard, appellant. Liquor Case. Exceptions overruled.

State vs. same. Liquor case. Demurrer. Exceptions overruled.

State vs. Hiram Jewett. Perjury. Exceptions overruled.

State vs. Otis E. Haskell et al. Burglary. On exceptions. Argued.

State vs. Maine Central Railroad. Indictment for causing death of an employee. On demurrer. Argued, continued.

Somerset County.

State vs. David H. Corson. Perjury. This case was argued on demurrer in 1871 and the indictment adjudged good. Leave to plead over having been obtained, defendant was tried and convicted and the case came up this year on exceptions to rulings.

State vs. William Smith. Indictment under chapter 27, section 20, for travelling from place to place selling liquors. On demurrer. Argued, continued.

WESTERN DISTRICT—LAW TERM, 1872.

Oxford County.

State vs. Inhabitants of Oxford. Defective Road. Argued and continued.

State vs. Seth W. Rowe.

State vs. same.

State vs. same.

Liquor cases. Exceptions overruled.

State vs. Grand Trunk Railway. Indictment for causing the death of an employee. Argued and continued.

Cumberland County.

State vs. city of Portland. Nuisance. Argued and continued.

State vs. Eben Leach. Register of Deeds, misconduct in office. Exceptions overruled; judgment on the verdict.

State vs. Oliver A. Gould. Libel. Argued, continued.

State vs. David S. Mills. Larceny. Argued and continued.

State vs. Grand Trunk Railway. Loss of life by negligence. Continued to be argued by counsel of parties in interest.

State vs. F. O. J. Smith. Nuisance. Continued.

State vs. Dudley S. Merrill. Gambling House, Exceptions overruled. Judgment for the State.

State vs. Simon A. Lovatt. Manslaughter. Continued.

State vs. Alice Duffie. Appellant. Keeping shop open on the Lord's Day. Exceptions overruled. Judgment for the State.

State vs. Dudley L. Merrill. Appellant. Keeping liquors with intent to sell, &c. Exceptions overruled. Judgment for State.

State vs. Hugh Dougherty. Nuisance. Argued and continued.

State vs. Edward Gould. Nuisance. Continued to abide.

State vs. Dudley L. Merrill. Gambling House. Exceptions overruled. Judgment for the State.

State vs. Richard R. Hunt. Drinking house and tippling shop. Continued to abide.

I annex the usual tables, compiled from the returns made to me by the County Attorneys. So few reports from the County Treasurers have been received, that it has not been worth while to construct any tables from them. The law in regard to these reports ought to be made more definite.

THOMAS B. REED, *Attorney General.*

TABLE A.

10

ATTORNEY GENERALS REPORT.

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, 1871,	97	...	...	...	...	2	10	2	...	...	...	2	...	2	...	2	1	1	75	...
	Appealed cases pending Nov. 1, 1871,	21	...	...	...	...	...	7	...	...	...	...	11	...	...	...	...	...	...	3	...
	Indictments found Jan. Term, 1872,	35	...	...	...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	3	...
	Appealed cases entered Jan. T., 1872,	8	...	...	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...
	Indictments found April T., 1872,	21	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	1	...	18	...
	Appealed cases entered April T., 1872,	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...
	Indictments found Sept. T. 1872,	28	...	...	...	...	...	6	2	...	1	1	...	...	1	...	...	...	...	10	1
	Appealed cases entered Sept. T., 1872,	3	...	...	...	...	...	1	...	...	...	...	1	...	...	...	...	...	...	...	...
	Indictments pending at end of year,	9	...	...	...	...	...	1	...	...	...	...	...	...	...	...	1	1	...	...	...
	Appealed cases pending at end of year,	1	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...
AROOSTOOK...	Indictments pending Nov. 1, 1871,	7	...	...	...	...	...	2	...	...	...	...	1	...	2	...	2	...	...	...	...
	Appealed cases pending Nov. 1, 1871,	2	...	...	...	...	...	1	...	...	...	...	...	...	...	...	1	...	...	...	...
	Indictments found Feb. T., 1872,	1	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...
	Appealed cases entered Feb. T., 1872,	0	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
	Indictments found Sept. T., 1872,	7	...	...	...	...	...	3	...	...	...	1	1	...	...	...	...	...	...	...	2
	Appealed cases entered Sept. T., 1872,	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
	Indictments pending at end of year,	10	...	...	...	...	...	3	...	...	...	...	2	...	1	...	...	...	...	...	2
	Appealed cases pending at end of year,	1	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...
	Indictments pending Nov. 1, 1871,	13	...	...	...	...	2	1	...	...	...	...	...	...	...	...	...	1	3	...	7
	Appealed cases pending Nov. 1, 1871,	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
CUMBERLAND...	Indictments found Jan. T., 1872.	25	...	...	...	3	2	3	...	...	...	1	...	2	...	...	3	...	...	...	9
	Appealed cases entered Jan. T., 1872,	6	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
	Indictments found May T., 1872,	182	...	...	...	1	1	2	...	...	...	...	...	1	...	...	...	...	21	147	9

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.
Knox.....	Indictments found March T., 1872,	6	1	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2
	Appealed cases entered Mar. T., 1872,	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found Sept. T., 1872,	11	.....	.....	.....	.....	.....	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Sept. T., 1872,	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending at end of year,	19	.....	.....	.....	.....	2	1	.....	.....	.....	.....	2	.....	.....	.....	.....	2	3	.....	.....
LINCOLN.....	Appealed cases pending at end of year,	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending Nov. 1, 1871,	15	.....	.....	.....	.....	1	.....	.....	.....	7	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases pending Nov. 1, 1871,	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found April T., 1872,	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Apr. T., 1872,	4	.....	.....	.....	.....	.....	3	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
OXFORD.....	Indictments found October T., 1872,	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Oct. T., 1872,	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	.....	.....	.....
	Indictments pending at end of year,	9	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases pending at end of year,	4	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	.....	.....	.....
	Indictments pending Nov. 1, 1871,	13	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....
OXFORD.....	Appealed cases pending Nov. 1, 1871,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found Dec. T., 1871,	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Dec. T., 1871,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments found March T., 1872,	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Appealed cases entered Mar. T., 1872,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
OXFORD.....	Indictments found Sept. T., 1872,	13	.....	.....	.....	.....	.....	1	6	.....	.....	.....	1	.....	.....	.....	.....	2	3	.....	.....
	Appealed cases entered Sept. T., 1872,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Indictments pending at end of year,	9	.....	.....	.....	.....	.....	1	3	.....	.....	.....	.....	.....	.....	.....	.....	2	3	.....	.....

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 law.	Other offences.
WALDO.....	Indictments pending Nov. 1, 1871,	....	1	....	....	....	....	2	....	....	....	1	1	1	2	2	4	5	....	3	....
	Appealed cases pending Nov. 1, 1871,	....	....	....	....	....	....	2	....	....	....	....	3	1	....	....	....	....	....	....	....
	Indictments found Oct. T, 1871,	....	....	1	....	....	....	....	....	....	1	....	5	1	....	2	....	2	....	....	....
	Appealed cases entered Oct. T., 1871,	....	....	....	....	....	....	2	....	....	....	....	5	....	....	....	....	....	....	3	....
	Indictments found Jan. T., 1872,	....	....	....	....	....	....	1	....	....	....	4	1	....	1	....	2	....	....	....	....
	Appealed cases entered Jan. T., 1872,	....	....	....	....	....	....	....	....	....	....	....	4	....	....	1	....	....	....	1	....
	Indictments found April T., 1872,	....	....	....	....	....	....	2	....	....	....	1	2	....	....	1	....	....	....	....	....
	Appealed cases entered Apr. T., 1872,	....	....	....	....	....	....	....	....	....	....	....	1	1	1	1	....	....	....	....	....
	Indictments pending at end of year,	....	....	....	....	....	....	1	....	....	....	....	3	1	....	....	5	2	....	....	....
	Appealed cases pending at end of year,	....	....	....	....	....	....	1	....	....	....	....	3	....	1	1	....	....	....	....	....
WASHINGTON...	Indictments pending Nov. 1, 1871,	13	....	....	....	....	....	2	....	....	....	....	....	....	....	....	....	....	....	11	....
	Appealed cases pending Nov. 1, 1871,	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	....
	Indictments found Jan. T., 1872,	13	....	....	....	....	....	2	....	....	....	....	1	....	....	....	....	....	....	10	....
	Appealed cases entered Jan. T., 1872,	3	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	3	....
	Indictments found April T., 1872,	0	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....
	Appealed cases entered Apr. T., 1872,	2	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	2
	Indictments found Oct. T., 1872,	11	2	....	....	....	....	....	....	....	....	....	3	....	2	....	....	....	....	3	1
	Appealed cases entered Oct. T., 1872,	2	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	1
	Indictments pending at end of year,	12	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	11	....
	Appealed cases pending at end of year,	1	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	....
YORK.....	Indictments pending Nov. 1, 1871,	48	....	....	....	....	6	13	....	1	1	6	7	....	12	1	5	9	2	35	46
	Appealed cases pending Nov. 1, 1871,	7	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....
	Indictments found Jan. T., 1872,	8	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....

Appealed cases entered Jan. T., 1872,	4
Indictments found May T., 1872,	17
Appealed cases entered May T., 1872,	8
Indictments found Sept. T., 1872,	44
Appealed cases entered Sept. T., 1872,	8
Indictments pending at end of year,	48
Appealed cases pending at end of year,	13

TABLE B.

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

[illegible]

Sentences from 1863 to 1873 inclusive.

YEARS.	State Prison.	County Jail.	Reform School.	Fine, &c	To be hung.	Insane Asylum.
1872.....	49	50	1	163	1	.....
1871.....	59	83	10	169	.....	2
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	.....
Total for ten years.....	595	679	64	1,400	15	6

Liquor cases disposed of in the Supreme Court.

COUNTIES.	No. of cases.	Fines, &c., collected.	Committals
Androscoggin.....	12	\$1,519 64	1
Aroostook.....	1	50 00	.....
Cumberland—Superior Court.....	21	1,871 69	.....
Franklin.....	2	120 74	1
Hancock.....	.....	.....	.....
Kennebec.....	.....	.....	.....
Knox.....	10	876 51	2
Lincoln.....	.....	.....	.....
Oxford.....	.....	.....	.....
Penobscot.....	22	1,505 00	.....
Piscataquis.....	.....	.....	.....
Sagadahoc.....	4	292 81	1
Somerset.....	7	724 48	.....
Waldo.....	1	30 00	.....
Washington.....	7	866 25	.....
York.....	12	1,204 51	.....
Total for 1872.....	99	\$7,606 64	5
Total for 1871.....	258	11,053 05	22