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# FORTY-SEVENTH LEGISLATURE.

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HOUSE.

No. 45.

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*To the Hon. Legislature of the State of Maine :*

We, the undersigned, citizens of the State, offer our remonstrance against the acceptance and enactment into law of a fee bill, presented by his Hon. Chief Justice Appleton, in a communication printed as House Document No. 8, for reasons among which are the following :

It is not the service required by the act of 1867, which was to prepare a schedule of legal taxable costs as provided by statute, giving the chapter and section where such costs could be found, which schedule was to be presented to the Secretary of State in season to have the law take effect the first day of last August.

This fee bill presented is not, and does not purport to be, fees sanctioned by present statute, except in the case of fees of sheriffs.

The Court affect to have encountered a difficulty. Section 3d of the act under consideration provides that Clerks of Courts shall be liable to a fine for including other and higher fees than can be found in the schedule prepared by the Court, clearly meaning *statute fees*.

If here was a difficulty, it might have been obviated by simply adding to said section *statute fees, or unless ordered by the Court*.

We believe there was a difficulty, and it was this: Courts recognize usage as law, statute or no statute. In this case, nearly every Clerk had a different fee bill to put into his executions; and while the Court was willing to admit the force of usage, which bill should be declared legal, was the difficulty about which, after repeated efforts, they failed to agree; and this difficulty in section 3d was never thought of until long after the law should have taken effect, and probably then presented by some astute lawyer. And we believe what the Chief Justice says in conclusion, that they agreed to allow a careful Clerk to prepare a fee bill to be pre-

mented to your honorable body to legalize; and we believe that Clerk was the Clerk of the Courts of Cumberland, and the fee bill the highest of any county in the State, while all were in violation of statute provisions.

We believe to legalize that fee bill would be to more than treble some items of legal cost, and be virtually offering a premium to our young men to leave the farm, the workshop, the school room, the merchant's desk, to become writ hunters, adding nothing to the general prosperity of the community, but rather tending to impoverish the State.

We invite attention to one item presented in this fee bill—\$3.54 for a writ. Where do Clerks get this from the law? The old law provides—for plaintiff's declaration, 50 cents; for power of attorney, 50 cents; for an issue, \$2.50. The old law from which this is derived said, where issue is joined. The fee bill presented says, for a writ \$3.54, for an issue in fact \$2.50, and an additional \$2.50 for an issue in law; and by the same process of reasoning by which they get \$3.54 under the old law, they would get under this new fee bill \$8.54 costs for the writs. The issue is tendered just as much in one case as in the other. We believe the Judges of our Courts found themselves between the "nether mill stone," the people, and the "upper mill stone," the bar, and have applied to you for relief; and we earnestly hope you will leave them to apply the lever of truth and uprightness, and thus escape the dilemma, or to be — As in duty bound will ever pray.

JAMES M. SMITH,  
NOAH HALL,  
JOSEPH C. DUNN,  
GEORGE SCAMMON,  
TOBIAS LORD,  
GEO. W. TAYLOR,  
ANDREW ARMOR,  
J. F. EMERY,  
JAMES WILLIAMS,  
JOHN LAUGHLIN,  
GULLFORD BROWN,  
ALBERT TWINING,  
GEORGE F. TRASK,  
ALBERT J. HAM,  
JOHN GLYNN,  
ALBERT L. TRASK,  
WILLIAM G. DOANE,  
ORA A. STEARNS,  
MOSES C. SMITH,  
HENRY F. BROWN,  
JOEL H. JOHNSON,  
JOHN W. DAVIS,  
JOSEPH M. DAVIS,  
IRA M. SMITH,

JOHN H. YORK,  
HENRY JONES,  
LORENZO KNOWLES,  
SYLVANUS CHASE,  
SILAS W. WOODBURY,  
MATHEW J. CRESEY,  
AUSTIN WOODBURY,  
A. J. NEALEY,  
EBEN E. ELLINGWOOD,  
JONATHAN BROWN,  
ISAAC F. COOK,  
JOSEPH CLARK,  
FRANK ROGAN,  
JOSEPH CLEMENTS,  
M. J. DODWELL,  
SEWELL BRASSBRIDGE,  
JOHN W. SHAW,  
FRANKLIN BARTLETT,  
JOHN CLARK,  
WM. MCKINLOY,  
WARREN DAY,  
N. P. EMERSON,  
THOMAS B. COOK.

STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
February 3, 1868. }

Laid on the table by Mr. PORTER of Burlington, and ordered  
to be printed.

S. J. CHADBOURNE, *Clerk.*