MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1849.

Augusta:
WM. T. JOHNSON,.....PRINTER TO THE STATE.

1850.

TWENTY-NINTH LEGISLATURE.

No. 3.] [House.

COMMUNICATION OF GOVERNOR DANA.

To the Honorable Council:

Valorus P. Coolidge was, in March, 1848, convicted of a capital offense, and the time, (one year from the date of sentence,) within which the statute prohibits an execution, has nearly expired. In view of its expiration, I have endeavored, with all the care which should characterize an investigation and conclusion, on which the life of a fellow-creature is suspended, to give a just construction to the laws, under which he was convicted and sentenced, that I might rightly determine what duty devolves upon the executive, in the premises.

The law under which he was sentenced, is the law of the revised statutes, with a slight, but, (so far as it bears upon this question,) immaterial amendment. This law is nearly a transcript of the law passed in 1837. For some years previous to the passage of the law of 1837, a very general effort was made for the abolition of capital punishment, by arguments presented, and appeals made through the press; by the presentation of petitions, and

Wm. T. Johnson, Printer to the State.

by discussions in the legislature. The agitation finally resulted in the passage of the law of 1837, which was claimed as having accomplished the object, by making the issuing a warrant for execution, a mere discretionary act, instead of imperative, as under former laws. After the passage of this law, the efforts of the advocates of the abolition of capital punishment ceased, and the public mind, with but slight indications of dissent, concurred in their construction—that the duty was no longer imperative on the executive to order an execution; and in their opinion, (though with less unanimity,) that the discretionary power should never be exercised. The evidence that such was the state of public opinion, cannot have escaped the attention of those who are the least observing of its indications. But, if doubts exist on this point, they must be removed by a review of the case of Thorn, the only conviction had since the law of 1837, except that of Coolidge. In 1844, Thorn was convicted of a capital offense, aggravated in its nature and circumstances. When the proper time arrived for inflicting upon him the penalty of death, if at all, the then executive withheld his warrant. I am not advised whether he adopted the construction that the duty was discretionary, or only refrained to act because copies of the case had not been certified to him; but this question is not material to the present purpose. The fact is one of universal notoriety, that the punishment of death has not been inflicted upon Thorn, though convicted of a capital offense, unattended by any extenuating circumstances. Thus the knowledge is brought home to every one, that our laws have failed to inflict the penalty of death; and yet not an effort has been made, through the legislature or otherwise, to ascertain and remove the

cause of such a result, in this instance, or to prevent its recurrence in future. The conclusion is therefore irresistible, of the general belief and acquiescence therein, that the penalty of death will not again be inflicted. This position was assumed by the attorney general in the trial of Coolidge, and the consideration was urged by him upon the jury, that his conviction would not result in his execution.

But though impressed as I am with the weight of the circumstances to which I have alluded, in favor of the idea, that the duty was changed by the law of 1837, from an imperative to a discretionary one,—circumstances perhaps sufficient to control the construction of ambiguous language—still I am unable to concur in that idea, or even to discover the basis on which it rests. The law of the revised statutes is as follows:

Chapter 154—Section 2. "Whoever shall commit murder with express malice aforethought, or in perpetrating or attempting to perpetrate any crime, punishable with death, or imprisonment in the state prison for life, or for an unlimited term of years, shall be deemed guilty of murder of the first degree, and shall be punished with death."

Chapter 168—Section 8. "When any person shall be convicted of any crime punishable with death, and sentenced to suffer such punishment, he shall, at the same time, be sentenced to hard labor in the state prison, until such punishment of death shall be inflicted."

Section 9. "And no person, so sentenced and imprisoned, shall be executed in pursuance of such sentence, within one year from the day such sentence of death was passed, nor until the whole record of such proceedings or case shall be certified by the clerk of said court, under the seal thereof, to the supreme executive authority

of the State, nor until a warrant shall be issued by said executive authority, under the great seal of this State, directed to the sheriff of the county wherein the state prison shall be situated, commanding the sheriff to cause the said sentence of death to be carried into execution."

The change in this, from the law in force up to 1837, is in the provisions found in the eighth and ninth sections, for a sentence to hard labor, in the state prison, and for an interim of one year between sentence and execution; with this exception, the laws of the State have ever been the same on this subject. It is contended that the sentence to the state prison is one distinct from, and conflicting with, the sentence of death; and that such being the case, the executive discharges his duty, if *either* of the sentences are enforced. But there is nothing, in the language of the law, to warrant the strange conclusion that it required the court, at the same time, to impose two *conflicting* sentences. To render the sentence to the state prison distinct from, and *conflicting* with the sentence of death, the extent of that sentence should have been during the natural life of the convict; but instead of that, the language used is—"until such punishment of death shall be inflicted"—language obviously contemplating the execution of the sentence of death, instead of conflicting with it. Besides, there is an obvious necessity for the sentence to the state prison, to secure the execution of the sentence of death. Under the old law, as but little time intervened between the sentence and execution, there was no necessity for statute provision, for the safe keeping of the convict; after conviction, he was remanded by the court, to the custody of the sheriff, to await execution; and he could only use for that purpose, the

county jail. But when the law provided for an interim of one year, between the sentence and execution, it was also necessary to provide for a more safe and convenient mode of preventing the escape of the convict. Hence the necessity, under the new law, of the sentence to the state prison, to render sure the execution of the sentence of death—the two are in perfect harmony with each other. But even were the two sentences actually in conflict with each other, they are mere provisions, regulating proceedings in court, and the modes in which its penalties shall be enforced, and are controlled by the positive enactment of chapter 154, section 2—that, whoever shall commit murder, shall be punished with death.

It also has been urged that, to render the duty imperative, the law should have required, in express terms, the executive to issue his warrant, at the expiration of the year. The laws of Maine, Massachusetts, New Hampshire—and it is believed the same is true of all the other states—never contained such express provision. The position, therefore is unsound, because it proves what no one will claim or admit, to wit:—that the duty was *never* imperative on the executive of this or the other states, to order an execution.

The act was never rendered necessary by statute, here or elsewhere; but the necessity results, and ever has resulted, from the general duty of the executive, under any form of government, to see the laws, and its penalties, executed.

In fact, I have entirely failed to discover any change in the law, tending, in the least degree, to remove the necessity, which all admit once existed, of ordering an execution after conviction and sentence.

It follows, then, that my action on this subject, must conflict with the popular construction of the law, with all the indications of public sentiment, to which I have alluded, sustaining, and acquiescing in that construction, and with the opinion of the government officer, urged upon the jury, when the conviction of Coolidge was procured, or I must take for my guide the opinions of others, entirely abandoning my own convictions. But the executive is bound to discharge the duties of the office, "according to the constitution and laws of the State," not as construed by others, but by himself. True, he may borrow light from other minds, to aid him in forming a conclusion, but his own mind must be the ultimate tribunal.

The only way of escaping this difficulty, is by the exercise of the power of commutation. The duty of issuing a warrant for an execution, devolves upon the executive alone; the power of commutation is vested in the executive, with the advice of the council. After the expiration of the year, I shall feel impelled, under the construction which I am forced to give the law, to issue a warrant for the execution of Coolidge, unless a commutation of his sentence, to imprisonment for life, is interposed. For the reasons indicated in this communication, I should readily concur with the council in such commutation, and would invite your consideration of the subject.

JOHN W. DANA.

COUNCIL CHAMBER,
Feb. 7, 1849.

STATE OF MAINE.

IN COUNCIL, February 10th, 1849.

The committee of the whole council, to which was referred the petition of Valorus P. Coolidge for a pardon, and to which was also referred a communication from the governor, under date of February 7th, 1349, in which the governor suggests the propriety of a commutation of the sentence, passed upon said Coolidge, and states that he "should readily concur with the council, in such commutation,"

REPORT:

That at the Supreme Judicial Court, begun and holden at Augusta, within and for the county of Kennebec, on the first Tuesday of October, Anno Domini, 1847, and, by adjournment, on the second Tuesday, being the fourteenth day of March, eighteen hundred and forty-eight, Valorus P. Coolidge, of Waterville, in the county of Kennebec, physician, was convicted of murder in the first degree, and it was therefore considered, by the said court, (on the forty-first day of the term, being the twenty-fourth day of March, Anno Domini eighteen hundred and forty-eight,) that the said Valorus P. Coolidge be hanged by the neck until he be dead; and for this purpose, that he

be conveyed to the state prison, situated in Thomaston, in the county of Lincoln, and until this sentence of death shall be inflicted upon him, that he there be put to hard labor, in solitary confinement. And it was further ordered by the court, that a copy of the record of this case be duly certified by the clerk, to the supreme executive authority of the State, as appears by a certified copy of the record of said case, now before the committee.

The revised statutes—chapter 174, section fourth—provides that whenever any person, who has been, or shall hereafter be sentenced by the supreme judicial court to suffer death, shall make application to the governor for a pardon, and the governor shall think proper, by and with the advice and consent of the council, to grant such pardon, on condition that the person thus sentenced be imprisoned or confined to hard labor during his natural life, or for any certain term of years, in the condition of such pardon to be expressed, the governor is authorized, in order to carry the same into effect, to issue his warrant, directed to all proper officers, and they shall be held to serve and obey the same, in the same manner as if such imprisonment or confinement had been the punishment awarded in the original sentence.

Valorus P. Coolidge has made application for a pardon. This committee has not been informed of any extenuating circumstance attending the commission by him of the crime of murder, in the first degree, of which he has been convicted; nor is the committee advised of the existence of any facts or circumstance to show that he was not properly and legally convicted, nor of any reason why an unconditional pardon should be at this time, or at any time hereafter, granted to him.

The committee, therefore, cannot and do not recommend that he be pardoned, except upon conditions; nor is it supposed that his petition for a pardon was made with any expectation that he could show any—the least—reason why an unconditional pardon should be granted him; but rather for the purpose of bringing before the governor and council the consideration of the subject of a conditional pardon, as provided for by the aforesaid section of the revised statutes, which refers to the case of an application for a pardon. With regard to a conditional pardon, the governor, in his communication to the council, states as follows: "The conclusion is therefore irresistible, of the general belief and acquiescence therein, that the penalty of death will not again be inflicted. The position was assumed by the attorney general, in the trial of Coolidge, and the consideration was urged by him, upon the jury, that his conviction would not result in his execution."

The committee are of opinion, that by the law of 1837, as well as by the provisions of the revised statutes, the governor has no further discretion in regard to issuing his warrant for execution in capital cases, than he had before the passage of those laws—the only material difference being in the delay of one year after sentence before warrant shall be issued. If the duty of the governor was imperative before the law of 1837, to issue his warrant for execution, in a reasonable time after sentence of death, it is now equally his duty to issue his warrant for execution, in a reasonable time after the expiration of one year from the day of such sentence, provided the whole record of the case be certified to the governor, by the

clerk of the court, under the seal thereof, as has been done in the case of Coolidge.

By the communication of the governor, the committee is officially informed of the fact, that a different view of the construction of the law was taken by the attorney general, at the trial of Coolidge, and there would seem to be strong reasons why a criminal should not be convicted by a jury, upon one construction of the law, taken by an officer of the government, to the jury, at the trial, and then a punishment inflicted upon him, founded upon a different construction of the law, as understood by other officers of the government.

The committee therefore recommend that the governor be advised to grant to Valorus P. Coolidge a pardon for the crime of which he has been convicted, on condition that the said Coolidge be confined to hard labor, during his natural life, within the state prison, situate in Thomaston, in the county of Lincoln.

The committee think proper to state that they do not intend that their action, in this case, shall constitute any general precedent for future cases,—this report being principally founded upon the fact that the attorney general, at the trial of Coolidge, took the position stated to the council, in the communication made by the governor, and before referred to.

All which is respectfully submitted, by

MANASSAH H. SMITH.

Per order of the committee of the whole council.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, May 25, 1849.

ORDERED, That 1,000 copies of the foregoing Communication of the Governor, and Report of Council thereon, be printed for the use of the House.

E. W. FLAGG, *Clerk.*