

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1850.

Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1850.

THIRTIETH LEGISLATURE.

No. 12]

[SENATE.

GOVERNOR'S COMMUNICATION.

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*Gentlemen of the Senate :*

THE numerous cares of a new and untried position have forbidden an earlier compliance with your request, that the "governor furnish the senate with an abstract of the case, and his opinion and decision on the same, lately before him, founded on a demand of the governor of New Hampshire, to have delivered up and removed to be tried in New Hampshire, Asa Wentworth and Henry T. Wentworth, charged with the commission of crime."

A requisition from Samuel Dinsmore, governor of New Hampshire, to the governor of Maine, dated May first, eighteen hundred and fifty, and addressed to my predecessor, was presented to me by Stephen W. Dearborn, the agent therein named, on the twenty-fourth of the same month.

The requisition called for the delivery, "in conformity to the constitution and law of the United States, of Asa Wentworth and Henry T. Wentworth, to Stephen W. Dearborn, appointed agent to receive them, that they may be brought into this state and dealt with as to law and justice may appertain." It was accompanied with an affidavit, certified as authentic by the governor, made by Bradbury P. Cilley before Daniel Clark, justice of the peace for the county of Hillsborough, New Hampshire, charging Asa Went-

worth and Henry T. Wentworth, together with others, with the murder of Daniel L. Parker, committed at Manchester, New Hampshire, on the twenty-ninth day of March, eighteen hundred and forty-five.

It was also accompanied with the warrant, issued by Daniel Clark as above, for the apprehending of the persons charged, certified as authentic by the governor.

The constitution of the United States (article four, section two) declares that "a person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." It is not required that the person be convicted of the crime, but simply that he be charged with its commission. The term "charged" is here, unquestionably to be received in its legal technical meaning—charged in due conformity to the laws of the state in which the crime is alleged to have been committed, in such manner as shall authorize the arrest of the person charged, in order to be put on trial. Nor is it said upon whom the demand shall be made—it would, however, seem apparent that it must be made upon the executive authority of the state to which the person shall have fled.

We are not, however, left to any doubtful construction of the constitution upon this subject.

The act of congress, February twelfth, seventeen hundred and ninety-three, points out, definitely, the manner in which the power granted in the above quoted article shall be carried into effect.

This act requires that the demand proceed from the executive authority of the state in which the crime is charged to have been committed—that it be accompanied by the copy of an indictment found, or an affidavit made before a magistrate of the state aforesaid, charging the person with the crime, and certified as authentic by the governor—and that it be made upon the executive authority of the state to which the person charged shall have fled. It also requires the executive authority of the state, thus called upon, to

cause the person thus demanded to be delivered up to the agent appointed to receive him.

The conditions necessary, then, to authorize the delivering up, are the identification of the person charged—that he be charged with treason, felony or other crime—that the requisition be from the executive authority of the one state upon the executive authority of the other, and that it be accompanied by an indictment found or affidavit made, charging the crime, and certified by the governor as authentic.

These conditions have, in my opinion, been complied with and I have ordered the persons charged to be delivered up to the agent appointed.

There is, as is believed, no law of this state, which upon a fair construction, in any degree conflicts with or controls the above requirements. Were there any, such law must be unconstitutional; for “the constitution and laws of the United States which shall be made in pursuance thereof” are declared to be the supreme law of the land, “any thing in the constitution and laws of any state to the contrary notwithstanding.”

I have therefore deemed it my duty to comply strictly with the letter and spirit of the constitution and law of the United States touching this subject. I have not felt authorized to go behind the record to look into the facts connected with the case before me.

Such a procedure would seem disrespectful to a sister state, and would bring our jurisdiction in conflict with hers, and tend to acts of retaliation.

The constitution of the United States declares that “full faith and credit shall be given in each state, to the *public acts*, records and judicial proceedings of every other state. This provision of the constitution is fraught with wisdom. It is alike necessary to the harmony, peace and perpetuity of the Union.

JOHN HUBBARD.

COUNCIL CHAMBER, }  
JUNE 3, 1850. }

# STATE OF MAINE.

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IN SENATE, June 3, 1850.

ORDERED, That 500 copies of the foregoing message be printed for the use of the Legislature.

A. H. SMALL, *Secretary.*