ACTS AND RESOLVES

PASSED BY THE

THIRTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE,

1857.

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GOVERNOR WILLIAMS' MESSAGE.

To the house of representatives:

I have attentively considered the provisions of the bill entitled "An act to provide for the trial of capital cases." It is a departure from the rule which has hitherto prevailed in this state for conducting the trial of indictments for capital offenses, and in my opinion discards a sound and important principle generally recognized in the administration of justice.

Heretofore, whenever provision has been made by law for the hearing of such cases, by a number of judges less than a majority of the full law court, it has always been accompanied by a provision allowing the accused to take exceptions to their rulings and instructions. This safeguard is accorded to every person whose rights of property only are involved before our courts, as well as to all those who may be put on trial for offenses which are not capital; and I cannot perceive that it is wise or just to take it away from him alone who is on trial for a capital offense.

It is of the utmost importance in securing the confidence of a community in its judicial tribunals, that the law of the land as promulgated by them should be uniform and harmonious; and this is eminently true in respect to the adjudication of criminal cases; but to allow four judges out of the eight who now constitute the supreme judicial court, to be the final arbiters of the law in capital cases, makes it at least possible for discordant opinions, on similar questions, to prevail at different times, thus producing a conflict of authoritative law within the same sovereignty and jurisdiction, which may conduct different juries to opposite conclusions, under a similar state of facts.

Moreover, if four judges only are to sit in the trial of capital cases, should they at any time happen to differ in opinion among themselves, the negative opinions of any two of them, by producing an equipoise, would be controlling and decisive of the point in difference; nevertheless, under the provisions of this bill the accused would be remediless in such a case, however erroneous those negative opinions might be in the judgment of a majority of the whole court, if it could be appealed to.

That two judges would not unfrequently be found at variance with their two associates in the unpremeditated opinions they might be

sometimes called upon to form, in conducting capital trials, may readily be presumed, when we consider the different constitution of independent minds, and the frequent introduction of new members upon the bench, under the operation of the present limitation of the judicial tenure.

Inasmuch, then, as this bill does not require the concurrence of opinion of a majority of "the supreme judicial court," which under the constitution is clothed with the judicial power of the state as the court of final resort, nor even unanimity among the four judges whom it proposes to authorize to try capital cases, and as it provides no alternative protection to the accused, by allowing him the privilege of taking exceptions to their rulings and decisions, I am constrained to withhold from it my approval, and herewith return it to that branch of the legislature in which it originated.

JOSEPH H. WILLIAMS.

COUNCIL CHAMBER,
March 23, 1857.