

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE,

1858.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February  
26, 1840, and March 16, 1842.  
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AUGUSTA:
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1858.

## GOVERNOR MORRILL'S MESSAGES.

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*To the Senate and House of Representatives :*

I herewith lay before you for your consideration, a communication from his excellency the governor general of Canada, together with resolutions adopted by the legislative council and legislative assembly of Canada, conveying the thanks of the authorities of that government for donations of books and documents of this state ; also certain resolutions adopted by the legislature of the state of Connecticut in relation to slavery.

LOT M. MORRILL.

COUNCIL CHAMBER, }  
January 19, 1858. }

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*To the House of Representatives :*

In compliance with the request in your order of this date, I herewith transmit the report of the agent at Washington in relation to the claims of the state upon the general government.

LOT M. MORRILL.

COUNCIL CHAMBER, }  
January 25, 1858. }

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*To the Senate and House of Representatives :*

The record of the trial, conviction, and sentence of George Knight, for the murder of his wife, has been certified to me by the clerk of the judiciary courts, for the county of Androscoggin, by which it appears that on the tenth of March last, he was, upon trial, convicted of a capital offence, and that on the twenty-second of September last, he was sentenced "to be hanged;" and "for that purpose that he be conveyed to the state prison, situate in Thomaston, in the county of Lincoln, and that he be there put in solitary confinement, and to hard labor, until the sentence of death shall be inflicted upon him."

The execution of this sentence is prohibited by the statute "within one year from the day such sentence of death was passed."

As the year contemplated by the statute for confinement in the state prison will expire during my official term, when it will devolve on me, in the discharge of official duties, to give a construction to the law under which he was tried, has been sentenced, and is now held in prison, and apprehensive that a diversity of opinion exists in the state, as to the duty of the executive herein, it has seemed to me proper to invite the consideration of the legislature to the subject.

A general belief prevails that it is not imperative upon the governor to order an execution, that he would not voluntarily do so, and that, therefore, capital punishment is practically abolished; while it is justly inferable, from the record certified to me by its order, that the court contemplate an execution of its sentence in this case.

Every consideration requires that, in a matter of so much moment, there should not only be no ambiguity in the law and nothing left to executive discretion, but that the penalty which the law awards should be in accordance with the public expectation.

Until 1837, the penalty in capital cases was death, without qualification, and the sentence only waited the order for execution. The legislature of that year provided by law for the imprisonment in the state prison of persons under sentence of death, "until such punishment of death shall be inflicted;" and further "that no person so sentenced and imprisoned shall be executed within one year from the day of such sentence."

This act was the result of general and systematic efforts, for years, through the press, and by petitions to the legislature, for the abolition of capital punishment, and which ceased only with the passage of the act, those favoring it claiming that the object was practically accomplished, as by it, it was no longer the imperative duty of the executive to order an execution.

The first capital case occurred after the passage of this law in 1844, in which the extreme sentence of the law was never inflicted.

Another occurred in 1848. In his annual message of that year, the executive invited the attention of the legislature to the subject of "the punishment of convicts for capital offences," and added that "the impression has become a very general one upon the public mind, that capital punishment is practically abolished. The view taken of the law is that the law is not imperative upon the executive to order an execution; and that no executive would voluntarily, of his own will, deprive a fellow being of his life."

And again, in his annual message, in 1849, the governor called the attention of the legislature to the subject, and referring to his message the year previous: "I alluded to the general impression upon the public mind, that capital punishment was practically abolished by making the duty of ordering an execution a mere discretionary one; and to

the impropriety of enforcing the death penalty while such an impression existed."

Since 1849, there have been several convictions for capital offences, and there are now confined in the state prison at least five persons under sentence of death, several of them there for years. The fact that the penalty of death has not been inflicted in these cases or in any case, since the passage of the law above referred to, is notorious, and no general complaint is known to exist that the laws have failed to be executed by my predecessors. From all which it is justly inferable, that neither the people nor prior legislatures expected, or desired, the enforcement of the death penalty; but on the contrary, have adopted, or at least acquiesced, in the general impression above supposed to exist.

It is believed that sound policy will dictate that the law should be so explicit in its requirements as to leave no room for conflict between the popular construction and that of those whose duty it is to execute it.

The sentence contemplated by the law, and that considered by the court, is that the convict be "put into solitary confinement, and to hard labor, until the sentence of death be inflicted upon him." It may well be doubted whether the practice of allowing this class of convicts to associate with other prisoners, is at all allowable, and whether justice to this latter class, as well as public safety, do not forbid it.

Whatever may be regarded as the authentic construction of this statute, the popular one it received at its passage, and that acquiesced in by the people and subsequent legislatures, as well as by my predecessors, I cannot doubt, is, that it is not imperative on the executive to order an execution of the sentence of the court in capital cases; all which I must regard in the nature of precedents, tending to furnish a rule for the guidance of the executive; and taking this view of the matter, have thought it suitable to bring the subject distinctly before the legislature for its consideration.

LOT M. MORRILL.

COUNCIL CHAMBER, }  
February 1, 1858. }

*To the Senate and House of Representatives :*

A vacancy exists in the office of major general of the fourth division of the militia of this state, occasioned by the resignation of major general William S. Cochran. The duty devolves on you to fill the vacancy.

LOT M. MORRILL.

COUNCIL CHAMBER, }  
March 2, 1858. }