Veto from Governor Geary on the Bill Providing for the Commutation of the Death Penalty.

EXECUTIVE CHAMBER, HARRISBURG, April 5, 1869.—*To the Senate and House of Representatives of the Commonwealth of Pennsylvania:* GENTLEMEN—After mature and deliberate consideration of House bill No. 349, entitled "An act to authorize the Governor of this Commonwealth to produce any sentence of death to imprisonment for life," I am constrained to return it without my approval.

This bill, in my opinion, is unnecessary, and imposes an obligation and responsibility upon the Governor, which should not be put on him. It interferes by legislation with a power which should be prescribed by a constitutional provision, if it is deemed necessary, inasmuch as our laws cautiously guard against any severity of punishment, and give to the court and to the jury the duty and right to consider and apply all mitigating circumstances in favor of the prisoner at under rigor. Capital punishment is inflicted in this State for but one offence—of murder in the first degree. No man can be convicted of that degree of homicide without the sanction of the court and the unanimous approval of the jury. Two juries must sit on this trial. Challenges of jurors are liberally bestowed on the accused. The slightest doubts as to the degree of guilt, or the premeditation of the party, is invariably resolved in his favor by the judge, and encouraged by the court, to mitigate the punishment and reduce the degree. No tender are counts and juries of this class of crime, when it has to come common complaint that it is almost impossible to procure a conviction of murder in the first degree. The preamble of the act of 1794 sets forth in concise language the motives of the makers upon this subject. In the spirit of humanity it seems "expedient that certain penalties" and consures severe and excessive punishments, that it is possible that the punishment of death ought to be inflicted where it is absolutely necessary on the public safety. If our laws were severe, if courts and juries were not thus bound by their oaths and consciences to give the accused the benefit of all mitigating circumstances, if courts and juries were obliged to try and convict, or have no opportunity to listen with lenity, then there might be some excuse for the restricting right of the Executive in additional direction to the Governor. But the law, by otherwise, has, I believe, given the abundant lenity in every line of its provisions as there has been in every act of its administration. In addition to all of those advantages every convicted man has the opportunity before the court on his motion for a new trial, which is of itself always practically a re-hearing, and the application for a writ of error, and if there is the slightest degree of doubt in the mind of any one line of their legal duty, the humanity of the law again rescues the prisoner.

Institutions of crime of the highest dignity in all languages have over and again doubted the propriety of any power of commutation, or even pardon itself, and some of them positively protested against the existence of such power, contending that it is by the certainty of punishment alone that the ends of law enforcement and society protected. In all countries that power is lodged with those who constitute the Executive Council of State. No lower official is suffered to touch this solemn function. In this country the Constitution of the United States and by the Constitution of every State, the power of pardon is lodged with the Executive and sometimes with special courts of pardon composed of one of the legislative branches.

Without exception the people themselves, in their sovereign capacity, always make this the subject of special constitutional provisions, provide for it, consequently, and I add, duplicate, if not by express terms, forbid legislative interference with the subject. Such legislation is attempt to enlarge such power in the Executive. It is contrary to the spirit of the Constitution, and absolute subject like this should be opened to the fluctuation of legislative will. It is unjust to the Executive to compel him thus virtually to re-try case or re-hear the question of pardon, or commutation. It is unjust to courts and juries to expose their verdicts and to such irreproachable re-examinations and criticisms upon judicial acts, and it is unjust and scandal upon the administration of public justice to have such a power in one hand and the verdict and in a corner at the instigation of persons whose anxiety would prompt them to stop at nothing to secure human life. Life is protected by affection and friendship, some stimulated by a sense of pain, and will not be defaced by violence and to denounce jurors, and all this the Executive would be obliged to decide with him alone, unaided by any of those means of proof which were in the hands of the jury, and which conducted to the verdict and judgment on that verdict. In civil cases there is no new trial are to be received with caution, because there are no cases tried in which the accused may not be hunted out, and because it leads very much to perjury and to the subornation of perjury who has lost the verdict has had an opportunity of discovering his adversary's strength and his own weakness. It this is to be feared in ordinary cases, it is much more so in cases of crime. The more much the more must it be dreaded in cases involving the lives of human beings when such extraordinary means will be required to be used to prevent the serious situation in which they are unfortunately placed. Jurors are their rights as well as defendants, and unobserved reproach and unmerited censure should not be cast upon them. (Act of 1794, § 21).

It is not to be forgotten that the act is to a certain extent a deception. It seeming provides for a commutation in certain cases, it is not to be the final act of the law, and as if it were intended that the prisoner having the sentence of death should receive a punishment for life as an absolute, irrevocable punishment. The experience of history of this bill it is known that it was amended in the Senate so as to allow the Governor to commute for no less a period than that of life, and yet as I have before said, this is merely a legal name, for the power of pardon still remains in the Executive, and he may, and commuted, he or some other Governor may open the prison door and let the guilty man to walk out and enter again into that society whose most sacred duties he has violated, and to whom he has forfeited his life by his crime. Such crime cannot be pardoned. The power of pardon stands upon a different footing, and together from the power of commutation. It is the tender, and the Sister Sin, by the humanity of the Executive from considerations of public policy sometimes, from considerations of private right, from considerations of grace and mercy, but the power of commutation is intended to be an exercise not of sovereign grace but of judicial discrimination, by the Executive upon facts and circumstances which are inapplicable with its exercise.

It may be added that this bill is not in accordance with the recommendation upon the subject contained in my last annual message to the Legislative Assembly. It will be seen by reference to that document that it differs very simply expressed for authority to commute the sentence of death in any case, distinctly specified, to imprisonment, rather in the penitentiary for life, and that in years as the gradmating circumstances might seem to justify and demand.

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