

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1884.

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AUGUSTA :

SPRAGUE & SON, PRINTERS TO THE STATE.

1885.

The writ of error, before the Supreme Court of the United States at Washington, to reverse the judgment rendered by the State Court in favor of the State against the Cumberland and Oxford Canal, has been dismissed.

#### CAPITAL CASES.

On the night of the third of September, 1883, William Lawrence, a police officer of the city of Bath, while patrolling the public streets of the city, and protecting the lives and property of its citizens, was murdered. Intense excitement was created in the community. An efficient and valuable officer, while in the faithful performance of his duties, had been shot and the murderer had escaped. A large reward was offered by the city of Bath; efficient officers were employed to ferret out the perpetrator of the deed, but for nearly two weeks he escaped their vigilance. Daniel Wilkinson was finally arrested in the city of Bangor, charged with the commission of the crime, brought to the city of Bath, and committed to await the action of the Grand Jury. At the December term of the court in the County of Sagadahoc, Wilkinson was indicted for murder, and on the third day of January last a jury was empaneled, and he was placed at the bar for trial. It appeared from the testimony that Wilkinson was engaged in an attempt to break and enter the store of Mr. Gould of Bath; that he was detected while engaged in such unlawful act, and undertook to make his escape; that he was intercepted in his progress by Officer Lawrence, who made an attempt to take him into custody, whereupon Wilkinson discharged his revolver, which he held in his hand fully charged, at the head of Lawrence, killing him instantly. It was claimed in the behalf of the respondent, that express malice had not been shown by the State; that there was no premeditation on the part of the prisoner to take the life of Lawrence.

It was argued for the State, that the prisoner was in Bath for the purpose of breaking stores and committing larceny; that he was armed with a dangerous weapon, intending to

resist all opposition, and if necessary to execute his unlawful purpose or make his escape, to shoot down any citizen who might intercept him in his progress; that the instruments of death were found upon the person of the prisoner; that he was proceeding along the street in his flight with his revolver drawn prepared to take life, that he executed his wicked purpose upon meeting officer Lawrence, and that no excuse or palliating circumstances had been shown that should relieve the prisoner from the responsibilities of the crime. The jury found the prisoner guilty of murder *in the first degree*.

Exceptions were taken by counsel for the prisoner and argued before the Law Court at Augusta in May last. They were overruled by the full court, and at the August term in Bath, Wilkinson was sentenced by Judge Haskell to be executed on Friday, the twentieth day of November, 1885. Judge Libbey presided at the trial, and the prisoner was defended by Herbert M. Heath, Esq., of Augusta. In the preparation of the case and during the entire trial, the Attorney General received the valuable aid and co-operation of the efficient County Attorney of Sagadahoc County, Frank J. Buker, Esq., of Richmond. Detective James R. Wood of Boston, City Marshal Reed of Bangor, and other officers and citizens rendered the government most valuable services.

At the same term of court an indictment for murder was found against Lorenzo H. Turner and Lewis Hopkins, and they were arraigned for trial on the eighth day of January last.

Hon. J. W. Spaulding and Herbert M. Heath, Esq., appeared as counsel for the prisoners. The respondents were charged with the murder of Joseph Denney, an Indian living at Richmond, Maine, and there was some testimony in the case tending to show that a felonious assault was made upon Mrs. Denney, and that the deceased met his death in defending her from the assaults of the respondents. There was much conflict of testimony in the case upon the various points at issue; the respondents claiming that the death of Denney

was not caused by any acts of violence on their part, but resulted from other causes.

The jury were nearly equally divided as to the grade of the offence, and finally, after a deliberation of many hours, returned a verdict of manslaughter against the respondents, and they were sentenced by Judge Libbey, who presided at the trial, to hard labor at the State Prison for the term of eight years, and committed in execution of their sentence.

On the evening of November 14, 1883, Thomas Barrows was found dead at his home in Kittery, Maine, with six pistol bullet wounds upon his body. He had returned from Portsmouth, N. H., that afternoon in his usual health. He had been seen to cross Kittery bridge and pass along the public highway to his home. No motive on the part of any person, could then be assigned for the commission of so brutal a crime, and the theory of suicide, which was given wide circulation by Mary E. Barrows, the wife of the deceased, was for a short time accepted as the correct solution of the mystery, and the deceased was buried on the second day subsequent to his death. The theory advanced was not satisfactory to the officers of the government, and a most rigid and thorough investigation of the circumstances attending the death, was subsequently instituted, the body exhumed, an autopsy made, and it was fully demonstrated that the wounds could not have been self inflicted, and that the theory of suicide must be abandoned. The immediate cause of his death was clearly indicated, but when and by whom the deadly wounds were inflicted, remained a complete mystery.

It had been demonstrated by the autopsy, that, from the nature and character of one of the wounds, death must have been nearly instantaneous. The various statements given to the public by Mrs. Barrows concerning the cause of the death, her anxiety to impress upon the coroner the fact of suicide, her statement that she heard two pistol shots and saw Barrows fall while he was returning from the stable to the house, and her subsequent flight to the home of Oscar E. Blaney, nearly two miles away, to give the alarm, (concealing the fact from

her neighbors and relatives in the immediate vicinity), caused the Government to suspect that she had knowledge of the guilty authors of the crime and was seeking to screen them from punishment. The services of detective James R. Wood of Boston were procured, and on the twenty-fourth day of November, during an interview with Mr. Wood, she charged the crime upon Oscar E. Blaney. The respondents were promptly arrested and placed in Alfred Jail to await the action of the Grand Jury. At the January term of the Supreme Judicial Court, held at Saco, an indictment for murder was found against Mrs. Barrows, and she was awarded a separate trial, on motion filed by her counsel. A transcript of all the testimony, under the provisions of the statutes of the State, has been furnished your Excellency, and it becomes unnecessary for me to set forth the horrible details of this revolting crime. Mrs. Barrows was charged as a principal in the felony, and while it was not necessary for the State to show a strict, actual and immediate presence on her part at the time and place of its commission, or that she should be an eye or ear witness to the criminal act, it appeared that she acted at the same time and place for the accomplishment of the same end, that she was in a position to and did furnish aid and assistance to insure success.

It was claimed with much confidence by the State, upon the testimony in the case, that she planned and prepared for the accomplishment of the crime and first conceived the idea of taking the life of Barrows, and that it was her presence and assistance which emboldened and encouraged young Blaney in completing the wicked work. After a protracted trial, the jury, on the third day of February, returned a verdict against Mary E. Barrows and found her guilty of murder in *the first degree*. Exceptions were taken to the admission of the testimony of Oscar E. Blaney offered in behalf of the government. The objection was founded upon the fact that he was jointly indicted with Mrs. Barrows, and was called as a witness for the State, while the indictment was pending against him, and before a plea of guilty or *nolle prosequi* had been entered.

The exceptions were argued at Portland in July last, overruled by the full court, and, at the September term in York County, presided over by Judge Virgin, the sentence of death was imposed, to take effect on the third Friday of December, 1885. Judge Virgin presided at the trial, and the prisoner was defended by Hon. Ira T. Drew, Hon. William Emery and John B. Donovan, Esq.

The Attorney General was ably assisted in the prosecution by Frank M. Higgins, Esq., County Attorney of York County. Mr. Higgins is entitled to great credit for the vigilance shown in discovering the perpetrators of the crime, and for his untiring efforts during the trial.

At the same term of court, Oscar E. Blaney was indicted as a principal in the murder of Thomas Barrows and arraigned upon the charge. After the attempt of Mrs. Barrows, in her interview with Detective Wood, to cast the sole responsibility of the crime upon young Blaney, he made a voluntary statement of the part he bore in the commission of the offence. That statement was adhered to during his incarceration, and upon the trial of Mrs. Barrows, while an indictment for murder was pending against him, he was called by the Government as a witness for the prosecution. He was not obliged to testify and was so instructed by the court, but signified his willingness and became the State's witness.

The Government received his testimony. It is impossible correctly to anticipate the result that might have been reached without this evidence. It was regarded as material and important, if not vital, to a successful prosecution of the case on trial, and of paramount force. The prosecuting officer of the State, of his own authority, and upon his official responsibility, may give the pledge of the Government that the State's witness shall not be prosecuted, if he makes and testifies to a full disclosure of all matters within his knowledge against his accomplices. The evidence of accomplices has at all times been admitted for the State, either from a principle of public policy or from judicial necessity, though some eminent writers

say, that the law confesses its weakness by calling in the assistance of those by whom it has been violated. The practice, however, of admitting accomplices to give evidence against their associates, has been accepted in this State, and the degree of credit to be given such accomplices is submitted to the jury under proper instructions. There is no rule of law that juries may not convict upon such evidence. In the present case, the prosecuting officers did not feel justified in exercising this unlimited authority, and they had no authority to give the pledge of the Government in behalf of the commutation of any sentence that might be passed; and no pledge, indemnity or protection was offered by the prosecuting officers. The State has received, however, the same advantages and benefits from the evidence that it would, had its extraordinary favor been granted.

On the fourth day of February, the prisoner retracted his plea of not guilty and pleaded guilty to the charge contained in the indictment. The court, upon hearing, adjudged the crime to be murder of the first degree, and at the September term at Alfred, Oscar E. Blaney was sentenced by Judge Virgin to be executed on the third Friday of December, 1885.

Hon. George C. Yeaton appeared as counsel for the respondent.

It was reported to the authorities on the seventh day of September, 1883, that a murder had been committed in Brewer among the Italians employed on the Shore Line Railroad. County Attorney Fred H. Appleton of Bangor, accompanied by City Marshal Reed, immediately visited the scene of the murder, and discovered that Pasquale Coscie, one of the laborers and an Italian, was the murdered victim. Suspicion was directed towards two fellow laborers, Carmen Santore and Raffaele Capone, and they were promptly arrested and committed to jail. An indictment was found at the February term of the court in Bangor against both respondents for murder, and on the eighteenth day of the month, Carmen Santore was placed at the bar for trial. It appeared that the murdered man had received two bullet wounds, either of

which was sufficient to have caused death, and that further acts of violence had been committed. The motive of the crime was robbery, and the respondents rifled the pockets of the deceased, securing some thirty dollars. It was claimed by the State that the two prisoners combined to commit a felony, that the death of Pasquale Coscie was caused by an unlawful act within the scope of the combination, and that both were guilty, though the act which produced the death, was the act of one. There was testimony in the case showing that both prisoners participated in the act of violence towards the deceased. The prisoner was found guilty of murder in the first degree, and sentenced by Judge Emery, who presided at the trial, to be executed on the first Friday in April, 1885. The prisoner was defended by Hon. Abraham Sanborn.

At the conclusion of the trial of Carmen Santore, Raffaele Capone was immediately arraigned and a jury empanelled for his trial. The testimony was essentially the same as in the case of Santore, each prisoner protesting that he was innocent and charging the other with the crime. He was found guilty of murder in the first degree, and sentenced to be executed on the first Friday of April, 1885. In this case, County Attorney Appleton closed for the Government in a very able argument, occupying one hour and a half. Col. Albert W. Bradbury of Portland, defended the prisoner.

On the twenty-ninth day of July, A. D. 1882, Francis A. Smith, a young student at Harvard University, while spending his vacation in Maine, was shot by Dennis Kelly within the limits of Fort Popham on territory over which the United States was exercising jurisdiction. Immediately after the infliction of the mortal wounds upon the body of young Smith, he passed without the limits of the territory owned by the United States, and came upon the territory over which the State of Maine was exercising jurisdiction, and, from such mortal strokes, there died.

Dennis Kelly was a soldier in the military service of the United States. The act of Congress making provision for the enrollment of the national forces provides: that in time

of war, insurrection or rebellion, murder, assault and battery with an intent to kill, manslaughter, mayhem, wounding by shooting or stabbing, with an intent to commit murder, shall be punishable by the sentence of a general court martial or military commission, when committed by persons who are in the military service of the United States, and subject to the articles of war; and the punishment for such offences shall never be less than those inflicted by the laws of the State, territory or district in which they have been committed. This section confers upon military courts jurisdiction over offences committed by persons in the military service of the United States, but is applicable only *in time of war*. In time of peace, when any officer or soldier is accused of a capital crime, or of any offence against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company or detachment to which the person so accused belongs, are required to use their utmost endeavors to deliver him over to the civil magistrate and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. The articles of war provide for the surrender of all soldiers in the military service of the United States in time of peace, to the State authorities for punishment for any violation of the laws of the State, and under these articles a soldier is also personally amenable for any offence prejudicial to the good order and discipline of the army of which he is a member. The military authorities claim that the commission of the same acts by an officer or soldier of the army, in addition to being a violation of the local law, is also a violation of rules and articles for the government of the army; that though they are liable to be tried by the civil authorities, yet their conviction by such authorities will not discharge the officer or soldier from responsibility for the military offence involved in the same state of facts, and that the offender is punishable both as a citizen, subject to the municipal law of the place, and also as a soldier or officer, subject

to the military law of the United States, and that such accountability to different jurisdictions, and to different and double punishments for the same act, making two different offences, is fully settled by the decisions of the Courts.

The Legislature of Maine, in 1821, passed a statute to remove all doubts as to the place of trial, when the mortal blow was inflicted in one county, and death ensued in another, by providing that "if any person shall be feloniously stricken, poisoned or injured in one county in this State, and die of the same stroke, poisoning or injury in another county thereof," an indictment might be found in the county where the death happened. A similar statute was enacted during the reign of Edward VI, resulting from the conflict of authorities; some claiming that if the stroke was given in one county and death happened in another, the murderer must go free, while others claimed that he might be held in either county, wherever the indictment was found. Such a legislative act, which removes all doubt as to the place of trial by declaring that the court in the county in which the death happened shall have jurisdiction, has been held to be no violation of the spirit or letter of the constitution.

The Legislature of Maine, in 1841, extended the jurisdiction of our courts where the mortal wound was inflicted outside of the jurisdiction of the State and death ensued within, by providing that "if any mortal wound or other violence or injury shall be inflicted, or poison administered on the high seas, or on land without the jurisdiction of this State, by means of which death shall ensue within this State, such offence may be prosecuted and punished in the county where the death shall happen." Its purpose was to hold the murderer criminally responsible for his felonious acts, committed outside of the jurisdiction of our courts, when from the continuous operation of such illegal acts, his victim died within their jurisdiction. Under the laws of Congress there was no question as to the authority of the United States Government to take cognizance of Kelly's offence. Authority also existed under

the articles of war to proceed by general court martial, but neither the civil or military authorities of the United States Government at the time assumed jurisdiction of the alleged crime. The authorities of Maine felt that an offence of so serious and grave a character should not go unnoticed, and accordingly, at the August term of the Supreme Judicial Court in Bath, the matter was presented by E. J. Millay, County Attorney of Sagadahoc County, for the consideration of the Grand Jury. Many witnesses were examined before that body, and after a most patient investigation, an indictment was reported against Kelly for murder. The State was prepared at the following December term with its witnesses to proceed to trial, but the question of jurisdiction was raised by respondent and submitted to the Supreme Court of the State for determination.

It was claimed in behalf of the State, that a homicide, beginning with a mortal stroke or wound within a fort, arsenal or dock-yard over which the United States was exercising jurisdiction, and consummated by death upon land over which the State had jurisdiction, might be indicted and tried under our statute in the county where the death happened. That the crime against Kelly consisted in being the author of the death of a human being within the State, by the violent means which he employed without the jurisdiction; that the consequences of the shooting were not confined to the limits of the fort, but followed young Smith into the county of Sagadahoc and continued to operate upon his body until the crime was fully completed by his death; that the wrong-doer should be held criminally liable in the county where his victim dies from the continuous operation of his mortal blow, and that he was the guilty cause of death at the time and place at which his unlawful act produced its fatal result. The case was argued before the Law Court, and at the July term, 1884, a decision was rendered remanding Kelly to the United States authorities.

Hon. Washington Gilbert appeared for the prisoner. District Attorney Lunt and Judge Advocate Gardiner for the

United States. County Attorney F. J. Buker appeared with the Attorney General for the State of Maine.

On the evening of June 17th last, several young men of Embden, in the county of Somerset, proceeded to the house of J. F. Walker, who had been recently married, for the purpose of tendering him a serenade, and as claimed, upon the invitation of Walker, who, while they were outside of the house, discharged a loaded revolver mortally wounding Albert R. Daggett, one of the party. Walker was indicted for murder at the September term of the Court at Skowhegan. After a protracted trial of more than ten days, the jury reported that they were unable to agree, being divided as to the grade of the offence. S. J. Walton and J. J. Parlin, Esqs., appeared for the respondent. The State's case was admirably prepared and conducted by County Attorney J. O. Bradbury, and he was ably assisted at the trial by E. N. Merrill, Esq., the Attorney General being engaged at the time in the care of other State cases. Judge Foster presided at the trial.

At the October term of the Supreme Judicial Court for the county of Hancock, an indictment for murder was returned against Robert Grindle. Judge A. P. Wiswell appeared as counsel for the prisoner and the plea of insanity was interposed. When a plea of this character is made, the court is authorized to commit the prisoner to the Insane Asylum for observation. It appeared from the testimony introduced, that the prisoner's mental condition was not such as to justify a trial at that time, and he was accordingly, on motion of the prosecuting officers, committed to the Asylum by Judge Haskell, for examination and observation. The future course of the government will depend upon the report made by the Superintendent of that Institution after proper investigation.

On the ninth day of October last, Thomas F. Malloy, a deputy sheriff of the county of Kennebec, while in the discharge of his official duties, was shot down by Charles Morgan Wallace. The respondent was tried at the present December term of the Superior Court in Kennebec County, before Judge Whitehouse. It appeared that Officer Malloy with Deputy

Sheriff Stephen Cobb, upon information received by them that Wallace was transporting intoxicating liquors in violation of law, proceeded to search the vehicle in which the same were said to be contained, and while in the prosecution of such search, Wallace drew his revolver and discharged the contents at Officer Malloy. The shot proved fatal. The State's case rested upon the testimony of several reliable witnesses, and was not contradicted in any material points, except by the respondent and his wife. The jury returned a verdict of murder in the second degree. E. W. Whitehouse appeared for the prisoner, and the Attorney General was assisted by County Attorney William T. Haines. Mr. Haines made the closing argument for the State, and presented the State's case in a most admirable and forcible manner.

At the same term of court John S. Baker was indicted for the murder of Julia F. Tuck at Albion, in the county of Kennebec, on the fifth day of September last. His trial commenced at Augusta on the nineteenth day of the present month. The testimony on the part of the State disclosed a most brutal and inhuman assault by Baker, and that the death of Mrs. Tuck was the result of his violence. The jury returned a verdict against the prisoner of murder in the second degree. Judge Whitehouse presided at the trial, and the respondent was defended by Herbert M. Heath, Esq.

Harry Burns was convicted of manslaughter before the Superior Court of Kennebec County, at the December term.

Thomas J. Libby, of Scarboro', is now under indictment for the murder of Lydia S. Snow at Portland, on the fifth of September last. The trial will probably take place at the January term of the Superior Court in Cumberland County.

The convictions for murder in the first degree, during the year 1884, are in excess of previous years. The crime is one of the gravest recognized by the criminal law, and it was the deliberate judgment of the Legislature that the good of society required that the highest punishment should be imposed. There may be exceptional cases where jurors will hesitate to

apply the extreme penalty of the statute, but such instances have been exceedingly rare.

### MISCELLANEOUS.

The Legislature of 1877 passed a statute entitled "An act to prevent incompetent persons from conducting the business of apothecaries." Commissioners of Pharmacy are appointed by the Governor, and they are authorized to examine persons who desire to engage in the apothecary business, and upon satisfactory evidence being presented that the applicant is competent, may issue a certificate of the fact. The law further provides that if any person shall hereafter engage in the business contrary to the provisions of the act he shall be subject to a penalty of fifty dollars for *each week* he shall so continue in such business, which may be recovered by an action of debt to the use of the prosecutor. Under the act many suits of a private character have been brought against citizens of the State engaged in the business of apothecaries, for the recovery of large sums of money in the nature of penalties, for an alleged non-compliance with the terms of the act relating to registration.

Suits to recover penalties have also been commenced by private prosecutors against treasurers of business corporations, under a statute formerly existing, requiring the publication of semi-annual statements relating to the amount of assessments paid to the corporation, the existing capital stock, and the amount invested in real estate.

They were commenced without notice to such officers. No actual damage can be shown to such private prosecutors; and the proceedings are not within the control of the prosecuting officers of the State under the statute applicable to the same, and must be left to the legislative branch of the government to grant whatever relief may be deemed necessary. It is to be presumed that the Legislature did not attach the penalties for the purpose of enriching private individuals, who have no interest in the enforcement of the statute beyond the