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**Veto Message: Governor Farnham
1880 (H.2)**

An act relating to the duties of State's attorneys.

STATE OF VERMONT
Executive Department.
Montpelier, Vt., December 16, 1880

To the Speaker of the House of Representatives:

SIR: - I have the honor to return to the House of Representatives, where it originated, House bill number two, entitled "An act relating to the duties of State's attorneys," without my approval.

Section one of the bill provides that "The State's attorney, upon leave of the presiding judge endorsed thereon, may prosecute by information all crimes and misdemeanors; and may prosecute by information in all cases where grand jurors, empanelled before the several county courts, may find indictments."

This proposes a fundamental change in the prosecution of high crimes and misdemeanors.

Section one of chapter one hundred and twenty of the General Statutes provides that "The State's attorney may prosecute by information all crimes not capital and where the punishment is by imprisonment in the State Prison for a term not exceeding seven years."

This statute goes quite as far as the Constitution will permit. It allows prosecution for the minor crimes and offences by information, but the higher ones are still reserved to be dealt with by indictment by a grand jury.

This bill number two, in effect, puts an information by the State's attorney in the place of an indictment found by the grand jury in

all cases approved by the presiding judge, and quite likely would result in the power of the State's attorney superseding the powers and duties of the grand jury in nearly all instances.

This may be desirable; may diminish court expenses and facilitate the prosecution of criminals, but I do not think it Constitutional.

Section X of Part First of the State Constitution says: "Nor can any person be justly deprived of his liberty *except by the laws of the land*, or the judgement of his peers."

What does this expression, *By the laws of the land*, mean? Does it mean such statute laws as may be enacted after the adoption of the Constitution, or does it mean the common law of England as in force throughout the country at the time of the adoption?

Chancellor Kent says, "It may be received as a self-evident proposition, universally understood and acknowledged throughout the country, that no person can be taken or imprisoned * * * * * or deprived of his life, liberty or property unless by the law of the land or the judgement of his peers. The words *by the law of the land*, as used in *magna charta*, in reference to this subject, are understood to mean due process of the law—that is, by indictment or presentment of good and lawful men: 'and this,' says Lord Coke, 'is the true sense and exposition of these words.'"

This construction of the meaning of the words, *by the law of the land*, is sustained by the courts in New York, Massachusetts, North Carolina, Tennessee, Maine, the United States and Vermont.

Chief Justice Story, in his Commentaries on the Constitution, says that this clause *per legem terroe* (by the law of the land), as found in *magna charta*, means by due process of law; that is, due presentment or indictment, so that this clause in effect affirms the right of trial according to the processes and proceedings of the common law.

In our own State the question has been raised in relation to the prosecution of minor offences without indictment; and the supreme court have decided in three instances that minor offences

may be prosecuted without indictment, but both of the learned judges who delivered the three opinions, Chief Justice Redfield and Judge Bennett say, in effect, that the words in section ten of the Bill of Rights, "by the laws of the land," mean the same as *due process of law*; that is, by indictment or presentment of good and lawful men, and that consequently the higher crimes should be prosecuted by indictment only.

From these considerations there seems to me but one conclusion—that the bill is unconstitutional.

Therefore I withhold my assent and return the bill without my approval.

ROSWELL FARNHAM,
Governor

Governor's Veto Sustained
H.2, 1880

The Governor's veto was sustained in the House:
Yeas 8 Nays 153

Sources: *Journal of the House*, December 16, 1880 (pages 397-399)