Mr. Stearns from the special committee to whom was referred

S. F. No. 151. A bill for an act to provide for the appraisal, sale and leasing the school lands, and the investment of the funds arising therefrom.

Reported the same back to the House with amendments recommending its passage.

Adopted.

Mr. Stearns moved that the rules be so far suspended as to allow S. F. No. 151 to be read a third time and put upon its passage.

Withdrawn.

Mr. Tollman moved that the bill be referred to the next Legislature.

Mr. Acker moved to lay the bill upon the table.

Carried.

S. P. Jennison, Esq., private Secretary of the Governor, appeared in the Hall, and delivered the following message:

EXECUTIVE DEPARTMENT,
St. Paul, March 8, 1860.

To the Honorable the House of Representatives:

I herewith return, without my signature, a bill entitled—

An act to commute the sentence of Mrs. Anna Bilanski, now under sentence of death, to imprisonment during her naturul life in the State Prison.

Anna Bilanski was convicted, in the District Court of the second judicial district, in and for the county of Ramsey, of murder in the first degree. She had, in that court, a full, fair and impartial trial. No extraordinary effort was made to procure her conviction. Her defense was conducted by two of the ablest counsellors and advocates in the State—the district attorney appearing alone for the prosecution. The jury, selected in the manner required by law, and accepted by the accused, after full exercise of her privilege of challenge, having deliberated upon the evidence, rendered their unanimous verdict; and each of the twelve separately, in open court, and under the sanction of his oath, declared that upon the evidence before him he found the prisoner guilty of the crime charged in the indictment—guilty of the deliberate murder of her husband, Stanislaus Bilansky, by poison. On that trial, so strictly according to law and the practice of courts of justice in criminal cases, were all the proceedings, even in matters of mere form, that each and all the objections taken by the counsel who defended her at the trial, as well as those made by the counsel afterwards employed, were overruled by the Supreme Court, in full bench, no one of the Judges dissenting. Thereupon all questions of error having been thus decided, the judgment and sentence of the law was duly pronounced. A certified copy of the record of the proceedings in the case, and the minutes of all the material testimony, taken by the presiding Judge, were filed in this office, as required by law.

It then became my duty to designate the day upon which the sentence of the law should be executed; unless, indeed, it should appear proper to exercise the power to pardon or reprieve, which the Constitution vests in the Executive. To my great regret there appeared no occasion for the interposition of the pardoning power at that time. The proceedings had all been regular and according to law; and the minutes of the evidence left no doubt in my mind that under those proceedings a just verdict had been rendered. In the discharge of this most disagreeable, but imperative duty, I issued to the proper officer the warrant required by law, appointing the 23d day of March next for the execution of sentence. And until this day neither the Judge who presided at the trial, nor any juror who convicted, nor any attor-

ney engaged in the cause, nor indeed any other person, has filed in this office any memorial or petition, with or without reasons alleged, asking the pardon or reprieve of the guilty woman.

So far the proceedings herein were all in conformity with law. And in this case it began to be demonstrated that at length laws for the protection of human life could be executed in Minnesota; that the greatest felons could no longer escape justice at the hands of our Courts; and that the terrible spirit of Lynch Law had thereby received an efficient check.

There comes to me now this bill, proposing by a legislative act to change the penalty which this unhappy woman has been sentenced to undergo.

The pardoning power is vested by our Constitution in the Executive of the State. It has in every community been ever felt that the danger to be feared was the too frequent interposition of that power. Hence, in some States the Governor can exercise this prerogative only by the advice and consent of the Senate. Indeed, in one branch of the Convention which framed our own Constitution it was proposed to give the Senate this advisory power, not, surely, to coerce the executive discretion, but, on the contrary, to restrain its undue exercise. There is no more important, no more sacred prerogative than this, in whomsoever it is vested.

On the one hand, is the awful responsibility of permitting the sacrifice of a human life, there being yet sufficient cause for pardon; and on the other, the no less awful apprehension of endangering the safety of society, promoting a contempt for law, and encouraging the mob spirit by ill advised interference with the regular course of justice.

It seems to me plain that the pardoning power should never be exercised except for cause shown. It may be some defect in the proceedings, some doubt about the guilt of the convict, some new evidence discovered, some mitigating circumstances, or other reasons, which should be exhibited to the proper authority, and the interposition of that authority asked. Mere individual sentiment, far more mere sympathy, should not be sufficient to prompt to executive interference.

This responsibility, if the Legislature have, or can assume the power to reprieve or pardon, is no less weighty upon each member of the Legislature than if he alone must determine the whole matter. The greater number concerned in making the determination, would doubtless lessen the feeling of responsibility, but nothing further, which is precisely the reason why the power is not vested in Legislatures.

It will not be denied that every legislator should act as considerately, examine the circumstances of each case as fully, and require as good reasons for seeking by an enactment to grant pardon, commutation or reprieve, as if he were himself the Executive, acting individually. Nor can the Governor properly sign an act of that nature, except upon such consideration and under such circumstances as would have induced him to interpose without such legislative proceeding.

I shall therefore indicate the reasons which influence my judgment as to the propriety of any interference with the execution of the law in the case of Anna Bilanski, by the Legislature or otherwise, after I have assigned my objection to the bill as an usurpation of executive prerogative by the legislative branch of the government.

In determining the constitutional question of the power of the Legislature to commute the sentence of a convict, three inquiries are necessary:

1st. Where is the pardoning power vested?

2d. Does the power to pardon include the power to commute?

3d. If conferred upon one department of the government, can it be legitimately exercised by any other?

Firstly. Where is the pardoning power vested?

Under the English law this power is one of the prerogatives of the Crown; although Parliament, which, untrammelled by constitutional restriction, is supreme, has in several instances exercised it. In this country the question whether it is inherent in the executive, in the absence of express provision, has never been adjudicated; but it is believed that the question is determined by express constitutional provision in every State of the Union. The language of our Constitution is as follows:

"The Governor shall have power to grant reprieves and pardons after conviction for offences against the State except in cases of impeachment."

The nicely arranged system of checks and balances, which is the basis of all our American Governments, has wisely conferred this power upon the Executive. The Legislature defines the crime and prescribes the penalty; the Judiciary applies the law to the particular case, and with its construction neither Legislature nor Executive can interfere. To the Governor is entrusted the power to enforce the enactments of the one and the decisions of the other; and germain to this is the exercise of executive clemency, the power to mitigate the rigor, and stay the arm of the law in cases which commend themselves to his mercy. With the enactment and construction of the law the powers of the other departments end; with its execution, that of the Executive commences. As the wisdom and justice of particular laws are in the sole discretion of the Legislature, as their construction is the especial prerogative of the Judiciary, so the time and manner of their execution is properly confided to executive discretion.

Secondly. Does the power to pardon include the power to commute?

The Legislature having prescribed the punishment, can it be altered or modified by the Governor?

Commutation is defined by all writers on criminal jurisprudence as conditional pardon. And upon the general principle that the greater includes the less, it is difficult to see why the power to grant an absolute pardon, and to absolve the offender from all the consequences of his crime, should not include the power to modify the penalty.

Every pardon, whether technically absolute or conditional, is granted upon the condition of its acceptance by the offender. Numerous cases are cited by the criminal authors, of pardons granted by the Executive upon condition that the convict should submit to a lesser punishment, as banishment or imprisonment.

Any condition, whether precedent or subsequent, not prohibited by law, may be annexed to the pardon; if accepted, the modified sentence is executed; if not, the law takes its course, and the original sentence is unaffected.

Thirdly. If the pardoning power is conferred upon one department can it be legitimately exercised by any other?

The Constitution of Minnesota declares—

"That the powers of government shall be divided into three distinct departments, legislative, executive and judicial, and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this Constitution."

I think it has been demonstrated that the power of commutation is vested in the executive; and there is certainly no clause in the Constitution providing for its exercise by any other department. It would seem, therefore, that the question is too plain to require further argument.

If the law making power can interfere with the province of the Governor, why may not the Judiciary exercise the same prerogative of mercy? In that case a writ of *mandamus* from the Supreme Court, commanding the Governor

to issue his pardon under the great seal of the State, would avoid the embarrassing consequences of the veto power, and furnish a much more speedy and effectual remedy.

Again, if the Legislature can legitimately exercise any power in this particular, are there not other Executive prerogatives which may, with equal propriety, be wielded by the Legislative branch? May not that body assume the control of the military and naval forces of the State, call out those forces at will, station them about the Capitol, assume absolute and irresponsible power? In that event, sovereignty departs from the people, and rests with their representatives.

These consequences may not be probable, but they are logically possible, and the argument which supports any encroachment, however slight, furnishes a precedent for greater and more dangerous inroads.

For this reason, I withhold my approval from the bill under consideration.

But, though returning this act for its unconstitutionality, I should still be inclined from respect to the representatives of the people, to consider this action of a majority of the Legislature, as their memorial or petition for the exercise of Executive clemency in the case referred to, if such memorial or petition were accompanied by a statement of facts, or reasons why clemency should be shown; or if I could suppose that the representatives, each for himself, acting under a full sense of individual responsibility, discarding prejudice, willing to execute the laws as they are, until they are lawfully changed, disregarding rumors, and enquiring out the true facts, had deliberately determined that there was good cause in this instance for the exercise of the pardoning power by the Governor.

If there exist good reasons for commutation of sentence in this case, why not present them with the petition, for filing and preservation in the executive office, rather than this somewhat coercive memorial, which shows no occasion for action?

But what circumstance connected with this case, or with the previous administration of justice of this State, demands or will justify the interposition of the prerogative in this instance.

The relationship subsisting between the murderess and her victim—the motive for the deed—the means used to accomplish the crime, the manner of using these means, and the demeanor of the woman since the act,—all stamp this case with the features of those wherein pardons are not wont to be granted.

The law ever justly regards the necessity of punishment upon conviction, as greater in all those cases wherein there is the greater opportunity for committing crime, and greater probability of escaping suspicion, detection and conviction. The more likely a crime to escape discovery, the more inevitable should be the penalty.

For that reason murder by poison has ever been regarded as most heinous. It never awakens the suspicions of the victim until too late. It proves a premeditated design to kill. It gives the victim no chance to fly or defend his life. It leaves no traces of the murderer's hand which all may read; and it often almost baffles the skill of science to detect, even when other circumstances have raised a suspicion of the crime.

And no one has such opportunity for employing this insidious means of death as the companion, the wife of the victim. The husband will not suspect that she who has sworn to love and cherish will betray and destroy; and it shocks the moral sense of the whole community to believe it. And so, against the wife with murder in her heart, no man has any protection, except in the certainty of the punishment which the law affixes to the crime.

In this instance, the motive for the commission of the murder, as the evi-

dence discloses it, was itself a crime. The reckless woman having violated her marriage vows, and betrayed her husband's bed, hesitated not to sacrifice her husband's life.

She procured poison and administered it; not in such quantities ' as at once to destroy life, but little by little, that no suspicion might arise. She sat by the bedside of her husband, not to foster, but to slay. She watched without emotion the tortures she had caused, and, by and by, administered no healing medicine, no cooling draught, but ever, under guise of love and tender care, renewed the cup of death.

Such was the crime of Anna Bilanski, the motive, means, and manner of its accomplishment.

Consider the history of the administration of criminal justice in capital cases in Minnesota. Since the organization of the Territory, what remissness in punishing murderers: murders are committed, and no one apprehended, no one hardly suspected of the deed. Or, the accused is apprehended, but escapes. Or, witnesses are spirited away, and no indictment is found. Or, the jury, through sympathy, or misapprehending the instructions of the bench, acquit. Or, the Court having misapprehended the law, a new trial is had.

From these and other circumstances, it has resulted that the people throughout the State have almost despaired of obtaining that protection of life from the Courts, which the laws and the courts were established to secure. Crime has multiplied fearfully, and the terrible alternative of popular executions has too frequently suggested itself. In two instances this rude desire for justice has led to open, murderous violation of law, involving the State in the common disgrace. Every failure of the law to be vindicated throughout its whole course, increases this sad feeling that there is no law for murderers but Lynch Law.

Will the Legislature, then, while the law remains as it is, that the punishment of murder shall be death, ask that the operation of the law shall in every case, be suspended? If not, where and when shall the execution of the law commence? What feature of the case under consideration entitles it to be made a special exception?

I regret, therefore, to say finally, that after full deliberation, I am of the opinion that the proposed commutation of the sentence of Anna Bilanski is contrary to sound public policy.

ALEX. RAMSEY.

Mr. Acker moved that H. F. No. 142 be taken up and the vote by which it passed be reconsidered.

Carried.

The question recurring upon the passage of the bill,

And upon the vote being taken, there were yeas 27, nays 32, as follows:

YEAS.

Mr. Acker,	Mr. Coe,	Mr. Purdie,	Mr. Sweet,	
Armstrong,	Hulett,	Rehfeld,	Thayer,	
Arnold,	Hunt,	Roy,	Van Vorhes,	
Baldwin,	Mann,	Secombe,	Watson,	
Beatty,	Manfor,	Shriner,	Webster,	
Bixler,	Morrison,	Stewart,	White,	
Chadderdon,	Olds,	Stoek,		27

NAYS.

Mr. Aaker,	Mr. Greene of Steele,	Mr. McDonough,	Mr. Shillman,	
Anderson,	Hayes,	Meighan,	Stearns,	
Brooks,	Johnson,	Mitsch,	Stephenson,	
Burnham,	Kinkead,	Olivier,	Tollman,	
Cleary,	Knox,	Robertson,	Walker, H.	
Cleveland,	Langworthy,	Sawyer,	Walker, Orange,	
Garrard,	Leavens,	Sherwood,	Wilkins,	
Greene of Olmsted,	Letford,	Shultis,	Speaker,	32