The Democratic Sentinel.

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—BY—

JAS. W. McEWEN.

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WARTNER'S SENTENCE.

EDITOR SENTINEL: As to "M"s communication in the Sentinel of last week I have but few words, to-wit: That the people in general are not interested in "X"s ability, eloquence, logic, future prospects, or personal appearance. These topics, the burden of "M"s song, are so foreign to the question in controversy that "X" hardly feels called upon to answer them in any manner. The public are, however, interested in the commutation of the sentence of the condemned man who awaits execution on the 15th day of May, 1885.

I wish to notice here briefly some of the legal grounds for the commutation of the sentence.

The defendant and prosecuting attorney can not, with the assent of the Court, consent to a trial for murder in the first degree, by the Court, for our statute expressly prohibits it. See sec. 1821, R. S. 1881, which reads as follows:

"The defendant and prosecuting attorney, with the assent of the Court, may submit the trial to the Court, EXCEPT IN CAPITAL CASES."

Also section 1904, reading as follows:

"Whoever purposely and with premeditated malice, or in the perpetration of or attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison or causing the same to be done, kills any human being, is guilty of murder in the first degree, and, upon conviction thereof, shall suffer death or be imprisoned in the state prison during life, in the discretion of the JURY."

It is a general rule of law in the United States that where a confession is made the sentence is a merciful one. Wartner came into court and admitted the offense charged against him by a plea of guilty, seeking to avoid a trial and secure a sentence usually rendered under similar circumstances. The Court in ordinary cases can pronounce sentence on a plea of guilty, but in capital cases this right is expressly prohibited by sections 1821 and 1904. R. S. 1881, above cited.

In this case the record shows that after a plea of guilty the Court tried the question of discretion as to death, or life imprisonment.—The following words are in the record on this point, to-wit: "And the Court, having heard the evidence and being sufficiently advised in the premises, finds the defendant guilty on his plea of guilty heretofore entered herein, as charged in the first count of the indictment and assesses his punishment at death." This proceeding, I think, is a clear encroachment on the strictly limited meaning of sections 1821 and 1904, R. S. 1881.

If the Judge was not authorized to pass sentence without the intervention of a jury, no act of the defendant—confession consent, or other thing—could make the execution a legal one. See 1 Bishop on crim. pro. sec. 316: "If the Court is not entitled to take cognizance of the offense (and according to the above authority we think it had not) yet proceeds with the cause and conducts it to judgment, and sentences the prisoner to imprisonment, the sentence is a nullity and the prisoner may be discharged on writ of 'habeas corpus.' And if the Court is not authorized by law to take cognizance of the offense, it can not become authorized by any consent of the defendant."

If our premises are correct the defendant had no power to waive a jury on a plea of guilty. Even a plea of guilty in a "capital case" is not a legal forfeiture of a man's life. "A valid charge" and "twelve jurors of good and lawful men" exercising a discretion vested in each of them by law must, we think, concur in a finding, as an exercise of that discretion, before a Judge can pronounce the death penalty with the sanction of the upreme law.

The defendant could have the question tested by an appeal CORAM NOBIS, or by a petition for a writ of habeas corpus.

The matter is not in any sense free from doubt, and is worthy of careful study by courts, lawyers, and those who may be called upon to exercise the hangman's art.

Further as to "M"s communication: He follows the advice of the old maxim, "when you have nothing to say, say nothing and be content," in an enviable manner. This advice "M" has so carefully observed in his communication that the most chronic grumblers are silent as the tomb. X.

COMMUNICATED.

EDITOR SENTINEL: Being a reader of the Republican as well as the Sentinel, I have noticed how eagerly the Republican has sought to find same excuse for attacking the Legislature which has but recently adjourned, and was Democratic in both branches. It endeavored to make a great noise about the Special Session which was called by the Governor to meet Morch 10th, 1885, implying that an extra session was not necessary, but was a scheme to relieve the tax-payers of the State out of about $1500 per day, while the members of the 54th General Assembly were wrangling over unimportant questions and seeking to disfranchise about 47 per cent. of the voters of this great State.

In 1852, when the present Constitution of Indiana was adopted, the framers of that Constitution, in their wisdom, thought that 61 days was sufficient time for our law-makers to transact the business of the State. And it was at that time, but, as a State, have we not kept apace with the progressive age in which we live; in the increase of our agricultural resources, mining and manufacturing interests, and in fact all interests which add to the wealth and development of our State.

In 1852 we had a population of all colors and sex 988,716 souls.—Our taxable property at that time was about $222,915,904. There was but a few miles of Railroad and Telegraph wires in the State. Our benevolent institutions were very inferior. At that time Fire and Life Insurance Companies were but few—Telephone and Electric light companies were unknown. Now, we have a population of 2,256,348 souls, and taxable property amounting to $1,223,236,465 79; Railroad corporations operating over 6,000 miles of road in the State, representing a valne for taxation of $45,442,941, while Telegraph and Telephone wires form a network covering the whole State, and representing millions of dollars worth of property. Our charitable institutions are second to no State in the Union, in proportion to our wealth. Magnificent edifices of learning may be found in our cities, towns and villages. Our agricultural, mining and mauufacturing interests employ thousands of men, women and coildren, who are dependent upon lsgislation for laws which will secure them from the exactions of grasping corporations. Then we say if 61 days was enough time in 1852 for our legislators to complete their labors, it is not now enough time, with all these interests to legislate for and to regulate, so that all classes and conditions of labor may be protected equally with the men of capital who invest in these enterprises.—And if our Legislature does not complete its labors, the Governor should be a man like Governor Gray, who has the courage and is whole-souled and big-hearted enough to say "Gentlemn, you can sit until your needful legis ation is completed, and for that purpose I call you in special session." The Republican holds up its hands in holy horror because there had been an extra session called: and yet it has been of frequent occurrence when the Republican party controlled the legislative department of the State. There were special sessions in 1872 and 1873, '75, '77, '79 and '81, and no more need probably than in 1885, and we do not recollect of half as much being said about it as about the last session.

As to the disfranchising of 47 per cent. of the voters, the Democratic party had the power to redistrict the State for Congressional and Legislative purposes, and they did it, the same as did the Republican party in 1875, and if the last apportionment is vicious and unfair the party will have to answer for it to the people in the next campaign, as did the Republicans in the campaign of 1876. But take the apportionment of 1875, and that of 1885, hold them up together and let an impartial jury decide which is the most fair to all the people of the State. The Republican should bear in mind the old saying, "That people living in glass houses should not throw stones." DORCAS.

Newton Tw'p, May 6th, '85.

WARTNER'S SENTENCE.

"Whoever is convicted of murder in the 1st degree shall be imprisoned in the state prison during life, or suffer death, in the discretion of the jury."—Sec. 1904 R. S. 1881.

"The defendant with the assent of the court may submit the trial to the court, 'except in capital cases.' All other trials must be by jury."—Sec. 1821 R. S. 1881.

"The penal code shall be founded on the principles of reformation and not of vindictive justice."—Art. 1, sec. 18. Constitution.

It is a serious question of debate with good lawyers whether the Court, without the aid of a jury, could impose the death penalty.—The Court can exercise a full discretion in all pleas of guilty, 'except in the four capital cases,' under our statute; but for a capital crime the accused "shall suffer death only in the 'discretion of a JURY.'"—Sec. 1904.

The law regards human life as too sacred to be taken at the hands of the public executioner without the concurrence of thirteen triers—twelve jurors and the Judge.—Many good lawyers are of the opinion that the legislature has wisely and tenderly shielded a man's life from the legal hangman's rope unless a jury of twelve honest men—judges of the facts and the law—in their discretion so find, and that finding be embodied in the Court's judgment.

Had the Judge called a jury and admitted the defendant's confession in evidence, the jury could have rightfully exercised that solemn discretion so wisely confided to it. The Judge called no jury, but "heard the evidence and passed sentence of death in a capital case."—Sec. 1821.

Under all the circumstances, we are inclined to the belief that civil death—a life sentence to the State prison—would be as well as an execution thus ordered.

Wartner may have been 'non compos.' Indeed, much has been shown since the trial to demonstrate that he is of unsound mind. The sacred action of a jury trial was not invoked. For want of it the judgment is probably void.—An execution under it is of more than doubtful propriety. The logic of commuting a void sentence, it must be admitted, is rather lame, but better by far than the taking of a life. We had better be guilty of false imprisonment than of homocide. There are some differences of opinion, arising partly from reason, and probably more from sentiment.

Passion and vengeance should have no place in the administration of criminal law. Society can not afford to be rash. Prudence, judgment and reason are always safe counselors. If the sentence shall be commuted, society will be protected. If the Supreme Court thinks the judgment unauthorized, we should be content to give the prisoner a lawful hearing, and execute him only when he has been lawfully convicted and sentenced.

SIMON P. THOMPSON,
MORDECAI F. CHILCOTE,
FRANK W. BABCOCK.

THE WARTNER AFFAIR.

INDIANAPOLIS, May 5, 1885.

EDITOR OF SENTINEL: The fate of Weibren Wartner, on May 15, 1885, may be commuted, respited, or postponed. I saw Gov. Gray to-day, and I very much doubt whether he will take any action.—It is his belief that it would have been better to have invoked the aid of a jury in arriving at the proper punishment. The words, "in the discretion of a jury" in all capital cases, seem to be words of jurisdiction and adjudication, and preclude action by the Judge alone. The Attorney General is of the opinion that the sentence pronounced by Judge Ward is void, and presents nothing for the Governor's action, and this will preclude hope in that quarter.

The technical niceties of statute law may not be meekly and patiently regarded by some who cry for Wartner's blood on the appointed day. If he should be hung on the sentence of Judge Ward, based on a plea of "guilty," and the Supreme Court should afterwards decide that he was executed on a void judgment and warrant, our people, and especially those who directed and carried the execution into effect would regret such action. The Court does not meet until May 12th, and their time for deliberation will be short.

The strictness and certainty of legal sanctions, even to technical nicety are, om libatim, paid to secure the rights of free and equal citizenship. The doctrine of equal rights demands a strict adherence to law in meting punishment to the guilty and protecting the innocent. A close adherence to "rule of interpretation conserves the public good by the prevention of Judicial tyranny." Not for Wartner, as a man, but for the sake of the Judge, the jailor, and my neighbors, I want no statute violated to secure Wartner's death. It is as sacred a duty to obey the law of criminal procedure as the statute defining crimes The country is in danger from an over-zeal to infer guilt and demand extreme punishment of all persons accused of crime, as well as from a morbid desire on the part of jurors to acquit. The duty of the citizen is to secure to each accused person the same care and effort to follow the approved forms of law in his trial. Now, if Wartner's sentence is void and his execution is proceeded with, his death will be recorded as a stain on the history of our community.

I shall in my feeble way assist Brother Babcock to secure an opinion of the Supreme Court on the points involved, if possible in time to save or sanction Wartner's death. If the reader will take the pains to read carefully sections 1767 and 1837 of R. S. 1881, it will occur how the Judge inferred his duty to be to at once fix Wartner's punishment and pronounce judgment on recording the plea of guilty. I do not say that the sentence is not deserved. I am also of the opinion that by Wartner's plea, silence and acquiescence he ought to be estopped from questioning the regularity of the proceedings to the extent of his power to consent.

A waiver will be a sufficient reply to many constitutional, statutory and common law rights. No consent, waiver or request in a criminal trial can however contravene a statute.

The definition of Wartner's crime

[Concluded on Fourth Page.