The Democratic Sentinel.

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THE DEMOCRATIC SENTINEL

DEMOCRATIC NEWSPAPER.

PUBLISHED EVERY FRIDAY,

—BY—

JAS. W. McEWEN

RATES OF SUBSCRIPTION.

.....$1.50

.....75

.....50

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One column, one year, $30 00
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EX-SENATOR M'DONALD VS. JUDGE WOODS.

HShows That the Supplemental Instruci ons in the Dudley Case Are in Conflict With All the Precedents, as With the First Charge.

[Indianapolis Sentinel.]

To the Editor—Sir: When the second charge given by Judge Woods to the federal grand jury in relation to bribery in elections in our state was published, I expressed surprise, believing as I did that it was a departure from the first. I also said it would bear the criticism of being intended to shield Dudley from indictment, and at all events it would probably have that effect. These and other expressions of a similar character, it seems, were framed into what purported to be interviews with me, in some of which it was made to appear that I had reflected on the personal character and integrity of Judge Woods, when it was not my intention to do more than express a strong dissent to the law laid down in the second charge, believing that in giving it the judge had committed a grave error of law, and to deprecate the consequences that would follow from it. My personal relations with Judge Woods and my faith in his integrity would not permit me to believe, much less express, such a belief as that he had corruptly given the charge. I desire, therefore, in the most unqualified manner, to disclaim any intent or purpose to reflect upon the character of Judge Woods or the character of any one not implicated in the crime.

I desire to say further, however, that since these charges have been published I have given the subject a much more careful examination than I did before, and the result of that examination has been to deepen my conviction that they cannot be reconciled, and that the law as laid down in the second charge is erroneous. It seems to me clear that the last clause of sec. 5511, in plain and unmistakable language, 'makes any one guilty who counsels bribery," "and while it is not a crime to attempt bribery, it is a crime to advise another to make the attempt." That is, one who counsels or advises any voter, person or officer to bribe any voter at any election for representatives or delegates to congress, or advises the attempt to be made, is guilty under that clause, although the person advised and counseled neither bribes any such voter nor attempts to do so. The advice or counsel to commit the crime of bribery is a substantive offense under the statute, and this is what I understood Judge Woods, in substance, to say in his first charge, while in his second charge he says in express terms that this is not so, but (to use his own language), "in any case, besides the mere fact of advice or counsel, it must be shown that the crime contemplated was committed, or an attempt made to commit it," thus putting it into the category of accessory crimes or crimes in the nature of accessories, in which, of course, there must always be a principal before there can be accessories.

This presents the precise issue between Judge Woods, as expressed in his second charge, and myself. When I first examined the statute, which I did at the request of Judge Woods, I came to the conclusion that the crime was complete when the counsel or advice was given, and so informed him in a brief note written before he gave his first charge, in which I used this language: "It seems to me that the specific language of the statute takes it out of the common law rule of construction (I might have added, in regard to accessories) and makes the advice given a substantive offense without reference to whether an overt act was committed." The text writers class offenses of this kind under the head of "attempts," and the distinction between them and accessory crimes is that the attempt is all that is necessary to complete the crime. Mr. Bishop, in his work on criminal law, paragraph 767, thus defines this kind of offense: "A common form of attempt is to solicit another to commit a crime; the act which is a necessary ingredient in every offense consists in the solicitation. Thus to incite a servant to steal his master's goods, or other person to undertake larceny * * * to offer merely a bribe to request, it seems, one to post up a threatening notice, are severally indictable misdemeanors though the person approached declines the persuasion." The authorities, as I understand, upon which Judge Woods and those who agree with him in regard to his second charge rely, are sec. 5,323 of the U. S. revised statutes, Republica vs. Roberts; 1 Dallas, 39, and Reg. vs Gregory, 10, Cox C. C., 459. I have examined all these citations with care and find nothing in any of them that in the remotest degree sustains Judge Woods' second charge. On the contrary, so far as they bear upon the question, they are directly against it. Sec. 5,323 of the revised statutes simply defines the offense of an accessary before the fact in the crime of piracy or murder on the high seas. The case in 1st Dallas was an indictment under the Pennsylvania law for treason against the commonwealth, committed during the Revolutionary war, in which Roberts was charged with aiding and assisting the enemies of the state in open war, etc., by enlisting in their armies and by persuading others to enlist. He was convicted on the first charge, but acquitted of the other because the persons whom he sought to persuade did not enlist, and therefore the persuasion did not aid and assist the enemy. How this supports the judge's second charge is more than I can see. The case in 10th Cox fully sustains the first charge, but is squarely against the second. It takes the distinction between substantive crimes and accessary crimes, and places attempts to incite others to commit felony or other high crimes in the list of substantive crimes, as misdemeanors. As this is an important case and seems to be much relied on by Judge Woods and his friends, I have thought best to give it in extenso.

Gregory was indicted, tried and convicted for soliciting and inciting John White and two other servants of one James Kirk feloniously to steal from their said master one bushel of barley, etc. There were three counts in the indictment. The offense was charged as misdemeanor. "There was evidence," so says the report, "upon all the counts of the indictment in proof of the offense charged, but no one of the three servants named stole any barley in compliance with defendant's solicitation or otherwise." Foster, for the defendant, insisted that the charge ought to have been laid under 24 and 25 Vict., which made counselling, procuring or commanding the commission of a felony, a felony on the part of the person counselling, etc., and that, therefore, the defendant had been indicted for the wrong crime and that the verdict must be arrested. The motion was overruled and the conviction affirmed by an opinion of Judge Kelley, which I quote here at length:

"Kelley, of C. B This conviction must be affirmed. The prisoner was indicted and convicted of a misdemeanor, and two questions have been raised by Mr. Foster: first, whether the expressions "soliciting and inciting" in an indictment are equivalent to and identical with the words "counseling and procuring" in 24 and 25 Vict. C. 94, s. 2; so that though a counseling or procuring is not charged in the indictment, the allegation therein of soliciting and inciting is to be taken as an allegation of counseling and procuring. It is unnecessary, however, to decide that question, and it is sufficient to say that I think those questions may bear different meanings and that I do not accede to the argument of Mr. Foster. As to the second point, looking at the provisions of the statute, I think it absolutely necessary to support a conviction under the above section that a substantive felony has been committed by the person counseled. It is the grammatical construction of the section. How can there be an accessary before the fact to the "principal felony" or a "principal felon" if no felony has been committed? The offense committed therefore, is properly charged as a misdemeanor, and the conviction is right. The opinion of the learned judge, "that the grammatical construction" of the crimes act of 24 and 25 Vict., referred to in the motion, made the crime of counseling, etc., an accessory crime and dependent upon the commission of the crime counseled, was undoubtedly correct, and that there could be no felony in giving the counsel unless a felony had been committed in pursuance of the counsel given. It will be seen that it is just what its title indicates, "an act relating to accessories to and abettors of indictable offenses." In affirming the verdict the court sustained a conviction for the offense of soliciting and inciting to commit crime, although the crime solicited had not been committed, nor, so far as appears, any attempt made to commit it

The case was affirmed on the authority of the King vs. Higgins, 2 East 5 This case is upon an indictment against Higgins for a like offense as that charged against Gregory in 10th Cox, of soliciting a servant to steal his master's goods. The indictment did not charge that any goods were stolen or that any other act was done except soliciting, etc. The question of the sufficiency of such an indictment was adjourned into the king's bench. Chief Justice Kenyon and other judges gave opinions in which they sustained the indictment on the ground that it was a misdemeanor at common law for one to solicit or counsel another to commit a felony or other high crime, although no act were done in pursuance of such counsel or solicitation. The syllabus of the case is as follows:

"To solicit a servant to steal his master's goods is a misddmeanor at common law; though it be not charged in the indictment that the servant stole the goods, nor that any other act was done except the soliciting and inciting."

It was urged against this proposition that it required both the act and the intent to complete an offense, and that here was only the attempt, but the learned judges said, and in this all substantially agreed, that "the act of soliciting and inciting" was all the act that the offense required, and that soliciting and inciting one to commit a felony or other high crime sufficiently disclosed the evil intention.

Bribery was an offense at common law, and to bribe or attempt to bribe an elector at any government election was a high crime, and consequently under these authorities any one who counseled and advised, or, to use the common law terms, solicited or incited another to bribe such elector, although nothing be done by the party solicited toward the accomplishment of bribery, was guilty of a misdemeanor at common law, the act of soliciting being the only act required to consummate it. But it may be said that there are no common law offenses under the federal government. That is very true, but where you find a statute that in effect defines an offense at common law, you look into the common law to see what is necessary to complete that offense—That is just what Judge Woods attempted to do, but fell into the error of looking at the wrong class of cases—that is, accessory offenses and not substantive offenses. In that mistake is to be found the error committed by him in his second charge.

In vindicating Judge Woods from anything save an error of law, I have thought it right that my own views of the statute she'd accompany the vindication, as it is a matter of very considerable interest to the people of our state.

J. E. McDONALD.

Washington, D. C., Feb. 16.

Notice of Examinations.

The examination of pupils completing "The Course of Study" in the "Common Branches" will be held as follows:

HANGING GROVE AND MILROY townships, at Osborne school house Saturday, March 2, 1889.

GILLAM township, at Center school house, Saturday, March 16.

BARKLEY township, at Center school house, Saturday, March 16.

WALKER, WHEATFIELD, KANKAKEE AND KEENER townships, at Wheatfield school house, Saturday, March 23.

JORDAN township, at Egypt school house, Saturday, March 9.

NEWTON township, at Saylerville Saturday, March 9.

MARION township, at Rensselaer school building Saturday March 9.

CARPENTER township, at the Remington school building, Saturday, March 16.

Examinations will begin promptly at 9 o'clock. Manuscript blanks will be furnished by the examiners. Pupils will be required to furnish pens and ink. No manuscript will be received unless written with pen and ink, properly signed and completed.

J. F. WARREN,
Co. Sup't.

BANK STATEMENT.

REPORT of the Condition of the CITIZENS' STATE BANK at Rensselaer, in the State of Indiana, at the close of its business, January 28th, 1889.

RESOURCES.

Loans and Discounts,		$57,885 91
Overdrafts,		919 60
Due from Banks and Bankers		14,333 06
Futniture and Fixtutes,		1,000 00
Current Expenses,		1,432 88
Currency,		2,210 00
Specie		165 5
Cash Items,		226 75
		$78,176 75

LIABILITIES

Capital Stock paid in,	$30,000 00	
Surplus Fund	500 00	
Discount, Exchange and Interest	3,647 58	
Individual Deposits, on demand,	28,122 91	
Individual Deposits, on time,	15,906 26	
	$78,166 85	

State of Indiana, County of Jasper, ss:
I, Valentine Seib, Cashier of the Citizens' State Bank of Rensselaer, Indiana, do solemnly swear that the above statement is true.

VALENTINE SEIB.

L.S. Subscribed and sworn to before me, this 29th day of January, 1889.

ARTHUR H. HOPKINS,
Notary Public.

February 8, 1889.

Personal.