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BY

JAS. W. McEWEN

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HOMŒOPATHIC PHYSICIAN & SURGEON.

RENSSELAER, - - INDIANA.

Chronic Diseases a Specialty.

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A GREAT QUASHER QUASHED.

Judge Claypool Blisters Woods

[Indianapolis Sentinel, April 4.]

"In the Sentinel of March 30, 1889," said Judge Solomon Claypool yesterday, "I find the following statement from Judge Woods made in an interview, to-wit:

'I had several conversations with Judge Claypool before giving my fisrt instructions and he urg'd upon me the importance of immediately charging the jury. Well, I told Claypool at the time that I could put the jury to work an that they could go along for awhile on unimportant cases, while in the meantime I would investigate certain points that he was undecided upon and when it became necessary to reinstruct the jury I would be prepared.

"This is presumed to correctly report the judge, s this language covers a point about which there has been some contention between Judge Woods and myself, and I presume that I may be permitted to speak now, as I think it is my right to do so. In the Indianapolis Journal of the 17th of January is the following:

"The assertion that Judge Woods has changed his views since his first charge (to the grand jury) was delivered is not true. His construction of the law has been the same from the beginning—perfectly clear and entirely unchanged His views have been known from the beginning to Mr. Claypool and other prominent lawyers.

"In another issue of the Journal, the date of which cannot now be given, is the following:

"His (Judge Woods') charge reveals the fact that the acting district attorney has been trying hard to force a different conclusion of the law on the grand jury and compel them to find an indictment, evidence or no evidence.

"Now I have no objection to Judge Woods and his friends doing whatever they may to prove, if they can, that tke judge's first and second instructions are consistent and to free him from every imputation of blame; but not at the expense of justice to me.—Judge Woods did not at or before his first instructions tell me he would reserve certain points for further investigation and instructions. I can conceive that the judge may have had some such talk with another person and afterward got the impression that it was with me. Certain I am, however, that he did not have such a conversation with me. I did not all along from the beginning' between the first and second instructions know that the judge's views were as expressed in his second instructions. Nor did I at any time attempt to get an indictment against Dudley, 'evidence or no evidence,' disregarding the judge's views of the law. Efforts to procure an indictment proceeded upon the ground that 'to advise the bribing of voters was a crime.'—Every person connected with the matter, attorneys and grand jurors, so understood the first instructions; so did everybody else, as I believe, who gave the subject any attention. The public press did, uniformly. No expression to the contrary can be found. Democratic and republican papers alike so interpreted the first instructions If the first instructions were the same as the second, and intended to convey the same idea, how unfortunate the judge was in making himself understood incorrectly. The fact is, the second and first instructions are directly opposed to each other. It is simply nonsense and sham to say they are the same. The first says 'to advise the bribing of voters is a crime.' The second says 'to advise the bribing of voters is not a crime.' It has been said that in the first instructions the judge only stated the law and in the second instructions defined the law, first stated more fully. That is to say, defining was to insert the adverb 'not' where before it had been omitted with a view to further investigate said instructions. At the proper time, after further investigation, the 'not' was inserted at the right place. For what?

"Judge Woods may have told some other person or persons that he intended to reserve some points of law for second instructions. I have no right to, and do not intend to, question this; but whatever may have been his purpose as to this, at some time prior to his first instructions, he abandoned that purpose before his first instructions were given. This is evident from the fact that his first instructions clearly indicated a purpose to go into the whole subject, and show that he did go into the subject fully. First, on the subject of jurisdiction, he called the attention of the jury to sec. 731 of the U. S. statutes, which provides that, when an offense 'is begun in one judicial district and completed in another, it shall be deemed to have been committed in either.' This covered an important point in Dudley's case, as Dudley's letter was mailed from New York to Indiana. Then, after devoting about a dozen lines to other matters he came to the subject of the election laws. I quote him, as follows:

"'The are some special sections I will speak to you of now, of the laws bearing upon elections, which constitute one of the classes of offenses you may be called upon to consider especially. We have just passed through an election of this kind and there are particular provisions of law bearing on such elections with which you should be thoroughly acquainted.

"What does this prelude indicate? Does it indicate 'bent on reserve?' Or a disposition to elaboration for the purpose of making the jury 'thoroughly acquainted' with the provisions bearing on such elections? Again:

"'The federal laws provide for the protection of congressmen especially, but by a customary and necessary construction the matter they contain relating to the election of congressman has also to be applied in many respects to elections in general, in the absence in some parts of separate statutes. I will call your attention to the federal laws bearing upon the subject, so that you may fully investigate them, saying, however, that as a matter of convenience, which I have determined after consultation with our district attorney, you should first take up ordinary business and then immediately proceed to investigate all such charges as may be brought to your attention regarding the offenses against these special laws.

"Our district attorney here referred to was not Claypool. And again I ask: Does this language indicate a purpose to reserve anything for future instructions, or a purpose to enable the jury to 'fully investigate?' Next, the judge quoted sec. 5,511 of the statute, this being the section on which the election cases depended, and then proceeded to define the section as follows:

"'Some offenses spoken of here, you will see, may be committed by a non-official person, and some of them by an officer of an election. And now, in reference to a particular part of the offenses named, I wish to say that considerable question has been made since the election through which we have just passed, as to whether an attempt to bribe constitutes an offense under this law. I instruct you that it does not under this statute. The latter clause of the section (5,511) makes anyone who counsels to bribery guilty

"From this there appears that there had been, before the first instructions were delivered, considerable question made, as to whether an attempt to bribe constituted an offense. This is correct, as will appear further along. Mark, the judge does not say that considerable question had been made about whether advising bribery was an offense It would seem, therefore, that if either of these questions ought to have been reserved for farther investigation, it should have been the question whether an attempt to bribe is an offense, and I venture the assertion that if this question had been reserved, the judge would not have instructed that an attempt to bribe was no offense He would not so instruct now. Repeating, somewhat, what has already been said, the position of his honor is that he omitted the little adverb 'not' before the word 'guilty' where that word stands at the close of the above quotation, and he did this because he told Claypool he intended to reserve that point for further investigation and instructions. Claypool knowing this fact, according to the Journal, and taking advantage of the situation, attempted to get an indictment against Dudley in opposition to the views of the judge. Now, if Claypool did that thing, it was very naughty, but I plead 'not guilty,' notwithstanding the high character of my accusers.

"I will now instruct you fully upon the word 'attempt' as it is used in this clause (last of sec. 5,511) in order that you may understand its force in relation to the specifications made regarding 'counseling' to bribe and actual bribery. This section does make it an offense to in any manner counsel, aid or assist in the bribery of a voter or in committing any other offense, named in the section, but an unsuccessful attempt to bribe a voter does not constitute any offense under this section. In other words, this statute does not condemn as a crime, no matter how clearly it may be proven, an attempt to bribe any voter, provided it can be shown that it did not succeed. In order to understand the word 'attempt' in its exact force, as contained in the last clause of this section it is necessary to supply the word 'to' before 'attempt' so that the clause will then read in this use, 'aids, counsels, procures or advises any such voter, person or officer to do any act hereby made a crime, or omit to do any duty the omission of which is made a crime, or to attempt to do so, he shall be punished by a fine, etc.' And so read this clause makes it an offense for any one to advise another to attempt to commit any of the offenses named in the section (5,511). So that, while it is not a crime to make the attempt, it is a crime to advise another to make the attempt.

"Now, I submit, is it not perfectly clear that all of this 'refinement' about the use of the word 'attempt' in the last clause of sec. 5,511 was for the purpose of showing how the attempt to commit any of the offenses mentioned in sec. 5,511 might not be an offense, and at the same time advising an attempt to commit any of those offenses be a crime; or, in other words to reconcile these two positions? Before the first instructions, as the judge says in those instructions, there had been 'considerable question' about whether an attempt to bribe was an offense. There was also some talk about the incongruity of a statute making it a crime to advise bribery and not make it a crime to attempt bribing. For the purpose of making a statement of the position of the judge perfectly clear on these two propositions, he repeats and illustrates his position thus:

"If A attempts to bribe B that is no offense under this statute; but if A advises B to attempt to bribe C then the one who commands or gives the advice is an offender under this law; and I will say that I consider there is some wisdom in this provision.

"If the judge was intending to reserve the question whether advising bribery was an offense, why did he so often repeat the declaration that advising was an offense? There was too much declaration of a thing intended to be reserved. Reserve does not usually talk so much.

"The burden of the judges's discourse was to prove that 'an attempt was not a crime and in such provision of the law he thought there was 'some wisdom.' If at that time the judge had in mind that to advise "an attempt' was no crime, where did the 'some wisdom' come in? Did he mean to say that there was some wisdom in so making the law that 'an attempt' should not be a crime? A motive for so making the law might possibly be conceived if advising 'an attempt' was made a crime.

"Judge Woods says in substance that it was possible only under the law as defined in his second instructions to indict Dudley. If the judge had adhered to his first instructions Dudley would have been indicted, and if he had never instructed the jury that to attempt to vote without having the legal right to vote and to attempt to bribe, were not crimes, there would have been scores more of indictments to quash. His last instructions rendered it practically impossible to indict Dudley, as in all such cases it would be under such interpretation of the law.—Dudley might have gone into a town meeting, or at some grand reception and publicly advocated and advised bribery without danger on account of so advising, and with a bare possibility of danger on other grounds, owing to the fact that it would be practically impossible to trace the results of such advising, however much—that is any particular act of—bribery back to the fountain head of villainy—to the 'instigator.' The purpose of congress seemed to be to afford every possible protection to the purity of elections, but if to 'attempt to vote illegally' and 'to attempt to bribe' and 'to advise bribery' are not crimes, the efficiency of the law to protect elections is destroyed. A person, under such construction of the statute, can go from place to place attempting to vote illegally, attempting to bribe voters, and 'advising bribery, all publicly and without danger. Such a construction is an encouragement to election frauds. Where, in such a law, does 'some wisdom' appear?

[Continued on 8th page.]

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Rensselaer, Ind., March, 89.

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