

Case No. 18,254.
[2 Sawy. 663.]

CHARGE TO GRAND JURY.

District Court, D. Oregon.

Nov. 4, 1873.

VIOLATION OF ELECTION LAWS—ACT OF MAY 30, 1870, ANALYZED AND EXPLAINED.

DEADY, District Judge (charging grand jury). An election has lately been held in this district for a representative in congress. It is publicly charged that numbers of persons voted at such election, illegally, and that others aided, counseled, procured or advised such votes to be so given. This being an election for an officer of the national government, congress has the power to make such laws to secure a fair and honest vote as may be necessary and convenient. Const. U. S. art. 1, § 4. In pursuance of this power, congress enacted section nineteen of the act of May 30, 1870. 16 Stat. 144.

By this section it is provided) “That if at any election for representative or delegate in the congress of the United States, any person shall knowingly: (1) Personate and vote, or attempt to vote in the name of any other person, whether living, dead, or fictitious; (2) vote more than once at the same election for any candidate for the same office; (3) vote at a place where he may not be lawfully entitled to vote; (4) vote without having a lawful right to vote; (5) do any unlawful act to secure a right or an opportunity to vote for himself or any other person; (6) by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any state of the United States of America, or any territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; (7) compel or induce by any such means (see clause sixth) or otherwise, any officer of any election in any such state or territory to receive a vote from any person not legally qualified or entitled to vote; (8) interfere in any manner with any officer of said elections in the discharge of his duties; (9) by any of such means (see clause sixth) or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse, to comply with his duty, or any law regulating the same; (10) knowingly and willfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any

CHARGE TO GRAND JURY.

person entitled to vote; (11) aid, counsel, procure, or advise any such voter, person, or officer, to any act hereby made a crime, or to omit or do any duty the omission of which is hereby made a crime, or attempt to do so,—every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and on conviction thereof, shall be punished by a fine not exceeding \$500, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of the prosecution.”

By section twenty-one of the same act to vote or offer to vote a ballot at any election where a representative in congress is to be chosen, is prima facie evidence that the person voted, or attempted to vote for such representative. In this case, such would be the reasonable inference, in the absence of any such presumption of law, from the fact that no votes were authorized to be given or received for any other person than a candidate for representative.

The success of a government based upon universal suffrage and frequent elections, presupposes that the elector will give his vote upon considerations of public policy, and the fitness of the candidate for the office to be filled, and not otherwise.

When this condition of things ceases to be the rule, and votes are given or withheld by reason of force, threat, menace, intimidation, bribery, reward, or offer or promise thereof,” the days of the republic are numbered, and it will not be long ere it dies in its own stench.

A representative government, selected and sustained by the free and unpurchased votes of honest and intelligent citizens, is probably the most desirable state of civil society known to man; while on the other hand, such a government, resting upon and reflecting the result of corrupt and dishonest elections, is an organized anarchy, more intolerable and unjust than any other. It is the triumph of vice over virtue—the means by which “evil men bear sway.”

To preserve the purity of elections and thereby secure the integrity of congress, this law has been enacted. You have been chosen and sworn to enquire, among other things, if there has been any violation of it in this district. You cannot keep your oaths and neglect or overlook this duty. If you find that any one has voted more than once, or in the name of another, or at a place where he was not entitled to or anywhere without having a lawful right to do so, it is your duty to present him for trial. And further, if you find that any one has aided, counseled, procured or advised any one to do any of these unlawful acts, it is your duty to present such person for trial. The persons who procure or aid others to vote illegally are generally the worse of the two, and always the most dangerous to society.

To bring a case within the eleventh clause of this section as I have subdivided it, it is not necessary that the party should have hired or bribed another to vote illegally. It

is equally a crime to counsel or advise the commission of such an act, or in any way to procure or aid it to be done.

But illegal votes are seldom given intentionally without a money consideration, or its equivalent, being at the bottom of the transaction.

The use of money in elections, particularly in the large towns and cities, is fast becoming a dangerous evil. If not prevented, our elections will in effect soon become what the election for an emperor was in the decline of Borne—a sale of the empire by the mercenaries of the Pretorian Guard to the highest bidder.

The use of money in elections, besides being in nine cases out of ten radically wrong and corrupt, imposes in the end a heavy and unjust tax upon the property and industry of the country.

By one indirection or another, through the acts and influence of those who are elected by this money, the public are compelled to return it with interest—often an hundred fold—to the persons who furnished it.

It may be said that this evil is confined to a few great cities, where ignorance, poverty and vice are used and abused for political purposes by rapacious and unscrupulous wealth.

But, judging from the statements of the press, and the common speech of men, there is ground to believe that for some years past the elections in portions of this state, and particularly in this city, have been materially influenced, if not actually controlled, by the use of money, expended to promote and produce illegal and dishonest voting. So late as the last session of the legislature, a distinguished member of that body was reported as saying on the floor of the house, that elections in Portland were controlled by the purchased votes of a rabble, who could be bought at 85 per head.

You, gentlemen, are supposed to represent the honest, law-abiding portion of the community, who only desire that our elections should be what the founders of the commonwealth intended—an authorized process of ascertaining the unbiased and honest opinion of the voters in relation to public men and measures.

To this end this law has been enacted by congress, and you have been called here to aid in its enforcement by presenting all persons for trial whom you may find to have violated it.

Present no persons through envy, hatred or malice. Weigh well the evidence produced before you. Do. not allow yourselves to be made the means of accusing the innocent, or setting on foot a public prosecution in aid of one side or the other of a mere political or personal controversy.

Neither should you leave any person unrepresented through fear, favor or affection. You should be vigilant and patient in your enquiries, and let no man escape a trial who is

CHARGE TO GRAND JURY.

shown to have voted illegally, or counseled, or procured another to do so. Do justly—let the consequences be what they may, and you have discharged your duty.