

law if possible; if not, with the best means at hand, which will secure that result without fraud or injury either to the candidate or the voter. The danger lies not so much in an immaterial departure from the strict terms of the law as to the method of procedure, which would not affect the great ends of the law, but rather in establishing a precedent, by which designing, obstinate, ignorant or dishonest men can thwart the first purpose of all election laws, namely: the ascertainment of the free and unbiased choice of the voter.

The Judges should always, and should in this case have exhausted all the discretion, that a due regard to the ends to be obtained would permit, and leave their judgment to the final adjudication of the Courts and Legislature.

Their refusal to hold an election in this case was not based upon any reason that goes to the merits of the law or its principal objects, but upon a dry technicality that the ballots, although confessedly an official ballot of the First District, was not designed for the Second Precinct.

Refusing to attend as they did, failing to perform their plain duty, it was perfectly competent for the Republican Judge to prevent the defeat of an election, by appointing and qualifying other officers as provided in section 45.

But the committee says "it will not do to say that these officers, thus illegally selected and qualified did their duty and no fraud resulted; the answer to this is, that their appointment and qualification were in direct opposition to the provisions of the law, and that the precautions which the Legislature has prescribed to ensure secrecy and fairness were violated."

I have shown that these officers were legally appointed and qualified under the law. Suppose they were not and yet as *de facto* officers they maintained all the precautions, and preserved all the securities of the law against fraud and in favor of fairness and secrecy, would the fact that their appointment was not entirely regular vitiate a fair election—a fair opportunity to vote. It hardly seems so.

The candidate is not injured. The right to vote, at the proper time and place, and with all the safeguards of the law, is secured, and thus the full purpose of