

an act to enforce the rights of citizens of the United States to vote, &c.; and provides "that any *officer of any election* at which any representative or delegate in the Congress of the United States shall be voted for," who should neglect or refuse to do his duty in regard to the election, or the certificate or returns, should be deemed guilty of a crime liable to indictment, &c.; and the question was, whether Governor Clayton was an "officer of election," within the sense of these words in section 22. In holding that he was not such an officer, Judge Dillon, in a careful opinion, states the rule we now invoke for obtaining the intent of the legislature, as found in the words of one of these penal laws, as follows:

"In the office of interpretation, courts, particularly in statutes that create crimes, must *closely* regard and even *cling* to the language which the legislature has selected to express its purpose. * * *

"When courts, in construing statutes, depart from the language employed by the legislator, they incur the risk of mistaking the legislative will, or declaring it to exist where, in truth, it has never had an expression. The legitimate function of courts is to interpret the legislative will, not to supplement it, or to supply it. The judiciary must limit themselves to expounding the law; they cannot *make* it. It belongs only to the legislative department to create crimes and ordain punishments.

"Accordingly, courts, in the construction of statutable offences, have always regarded it as their *plain* duty *cautiously* to keep clearly within the expressed will of the legislature, lest otherwise they shall hold an act or an omission to be a crime, and punish it, when, in fact, the legislature had never so intended. 'If this rule is violated,' says Chief-Justice Best, '*the fate of the accused person is decided by the arbitrary discretion of the judges, and not by the express authorities of the laws.* (Fletcher v. Lord Sondes, 3 Bingham, 580.)'

"The principle that the legislative intent is to be found, if possible, in the enactment itself, and that the statutes are not to be extended by construction to cases not fairly and *clearly* embraced in their terms, is one of