

Chapter CLXVII

GENERAL ELECTION CASES, 1911 TO 1913.

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129. The Senate election case of Henry A. du Pont, of Delaware, in the Sixty-second Congress.

Instance wherein a resolution providing for investigation of election of Senator was referred to committee which made no report thereon.

On January 26, 1911¹ in the Senate, Mr. Harry A. Richardson, of Delaware, presented the credentials of Henry A. du Pont, elected a Senator by the Legislature of the State of Delaware for the term commencing March 4, 1911. The credentials were read and filed without question, and on April 4² Mr. du Pont took the oath of office.

On February 26, 1912,³ Mr. James A. Reed, of Missouri, submitted the following resolution, which by unanimous consent was laid on the table subject to call.

Whereas the President of the United States, on the 22d day of January, 1912, appointed Cornelius P. Swain United States marshal for the State of Delaware, and sent said appointment to the Senate of the United States for confirmation, and said appointment was in due course referred to the Committee on the Judiciary of the Senate for proper action in the premises; and

Whereas certain prominent citizens of the State of Delaware caused it to be made known to said committee that they desired to protest against the confirmation of the appointment of the said Swain, upon the ground that he was an unfit person to hold the office of United States marshal for the said State of Delaware; and

Whereas the Committee on the Judiciary of the Senate of the United States designated two of its members, viz, Senators Sutherland and Overman, to act as a subcommittee, authorized to investigate the grounds and reasons for said protest; and

Whereas on the 2d and 9th days of February, 1912, there appeared before said subcommittee Hon. Willard Saulsbury, of Wilmington, Del., representing certain objectors to the confirmation of the appointment of the said Cornelius P. Swain, and there also appeared the said Cornelius P. Swain in person and by his counsel, Daniel O. Hastings, Esq.; and

Whereas said objectors, before said subcommittee, in substance and effect charged:

¹ Third session Sixty-first Congress, Record, p. 1463.

² First session Sixty-second Congress, Record, p. 2.

³ Second session Sixty-second Congress, Record, p. 2443.

1. That the said Cornelius P. Swain was unfit to occupy any place connected with or near the courts of the United States for the district of Delaware, because the said Cornelius P. Swain bore the common and general reputation of a persistent violator of the criminal provisions of the constitution of the State of Delaware intended to secure purity of elections;

2. That the said Cornelius P. Swain had notoriously been a vote buyer in the second representative district of Sussex County (New Fork Hundred) for many years:

3. That the said Cornelius P. Swain had procured and carried large sum of money into said precinct for the purpose of corrupting the voters of said district, and in the year 1908 was the assistant cashier of the corruption fund, and in substance charged that all of the above facts were notorious; and

Whereas the testimony of certain witnesses produced before said subcommittee and certain affidavits there read in evidence tended to prove:

(a) That at the election held in the State of Delaware in the year 1904 members of the legislature were being selected who would thereafter have the right to elect a United States Senator, and who did, in fact, elect the said Henry Algernon du Pont Senator from the State of Delaware;

(b) That shortly prior to said election a large sum of money, to wit, a sum in excess of \$25,000, and claimed to be in excess of \$58,000, was contributed by the said Henry Algernon du Pont.

(c) That said sum of money was distributed among various corrupt agents working in the interest of the said Henry Algernon du Pont.

(d) That said distribution took place in the office of the said Henry Algernon du Pont, and with his knowledge;

(e) That \$3,000 of the money so contributed was in the office of the said Henry Algernon du Pont delivered to be used for the purpose of corrupting the voters of the second representative district of Sussex County, Del., and was in fact so used under the direction of the said Cornelius P. Swain, and it was admitted by the attorney representing said Swain that said \$3,000 was so received by him; and

Whereas the evidence tended further to show that not only at the election held in the year 1904, but in the elections held in the years 1906, 1908, and 1910 similar corrupt practices were employed, and said evidence tended further to show that said corrupt practices did affect the election of the members of the legislature who in the year 1911 reelected the said Henry Algernon du Pont to a seat in this body; and

Whereas said subcommittee construed its duties to be confined to an investigation of the corrupt practices with which the said Cornelius P. Swain could be shown to be directly connected, and did not therefore investigate generally into the conditions surrounding said election, so that there has, in fact, been no investigation of the connection of the said Henry Algernon du Pont with said alleged corrupt practices, except in so far as the same was made to appear as an incident to the investigation of the said Swain; and

Whereas the said Cornelius P. Swain was appointed to said office at the request of the said Henry Algernon du Pont, notwithstanding the evidence tends to show his corrupt practices and general reputation as an election corruptionist: Now, therefore, be it

Resolved, That the Committee on Privileges and Elections, or any subcommittee thereof, be authorized and directed to investigate and to report to the Senate, whether, in fact, corrupt methods and practices were employed by the said Henry Algernon du Pont to secure the election of members of the legislature, who thereafter elected him to a seat in this body; whether said corrupt practices related to the general election of 1904, or the general election of 1910, or to his election by the members of the legislature selected at said elections; and whether the said Henry Algernon du Pont is a proper person to retain his seat, or ought to retain his seat, in this body as a Senator from the State of Delaware.

Said Committee on Privileges and Elections, or any subcommittee thereof, is hereby authorized to sit during the sessions or the recess of the Senate; to hold its sessions at such place or places as it shall deem most convenient for the purposes of the investigation aforesaid; to employ stenographers; to send for persons and papers; and to administer oaths. The expenses of the inquiry shall be paid from the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee or chairman of the subcommittee.

Said committee is requested to proceed with said investigation with all reasonable speed and to report its findings, together with the evidence, at the earliest possible date.

On the following day,¹ in the Senate, Mr. du Pont rose to a question of privilege and said:

Mr. President, I rise to a question of personal privilege. Certain resolutions were offered yesterday in the Senate by the junior Senator from Missouri formulating charges against me. I will at this time confine myself to making the most emphatic denial of the truth of the charges made and invite any action which the Senate may deem proper to take in the premises.

Subsequently,² Mr. Reed called up the resolution and in debate said:

On the 22d day of January, 1912, the President of the United States appointed Cornelius P. Swain United States marshal for the district of Delaware and sent said appointment to the Senate for confirmation.

I am not at liberty to disclose the proceedings of the executive sessions, but if the newspapers are to be trusted the committee exercised remarkable diligence and unusual alacrity in reporting the appointment favorably upon the very day it entered the Senate. But objections were made by some Senator, and the vote reconsidered and the appointment recommitted on January 23. The nomination was afterwards withdrawn by the President on February 13.

Prior to the withdrawal, and on February 2, there appeared before the subcommittee of the Judiciary Committee Hon. Willard Saulsbury, representing certain objectors to the appointment. Cornelius P. Swain also appeared in person and by his attorney, Daniel O. Hastings.

Thereupon Mr. Saulsbury stated, among other things, as follows:

Cornelius P. Swain has notoriously been a vote buyer in the second representative district of Sussex County for many years. * * * Specification 2: That on November 4, 1904, a Republican mass meeting was held at Dover, Del. After this meeting, appointment was made with Col. du Pont's manager to meet a number of the old Addicks leaders at his, the manager's, office in Wilmington the next day, on Saturday, November 5, 1904. This appointment was made by a telephone call of one of the candidates on the State ticket, who had learned from the Addicks, or Union, Republicans that they were without money for the election. Addicks notified United States Senator Allee that he could not "make good" for election money. (This was on Thursday or Friday, November 3 or 4.) It was said that Col. du Pont's manager had blocked Addicks on getting his money in New York, and the Republicans were without money.

On Saturday, November 5, Senator Allee, Dr. R. C. Layton, Robert O. Houston, et al., went to Wilmington to Col. du Pont's manager's office, where they saw the colonel and his manager, and discussed how the money should be spent.

Enough paper money could not be had from the Wilmington banks to supply the demand, so there was a great amount of gold—in the neighborhood of fifty or sixty thousand dollars—divided there. It was understood that \$10,000 more would be forthcoming on Monday.

C.P. Swain, now nominated for United States marshal, took his allotment for the second representative district of Sussex County (Northwest Fork Hundred) in gold coin \$20 gold pieces, done up in bags, put it in a satchel and left for home. * * *

When the additional \$10,000 was to be given out on Monday the manager telephoned Senator Allee to come with the man who was to get it, as he, the manager, would not otherwise trust that man.

Swain took the \$3,000 in gold to Bridgeville, Del., where he and his friends discussed what they should do with it for safe-keeping over Sunday.

¹ Record, p. 2492.

² Record, p. 2550.

Mr. Reed quoted charges that this money was delivered to political workers for the purchase of votes and was actually used for that purpose on election day. He further quoted Mr. Saulsbury as saying:

Addicks got some money loosened up on Monday and furnished it to his lieutenants, who already had the du Pont money, and in that way "out under" the Colonel (Mr. du Pont) and his manager; that is, Addicks's old crowd, and so produced the senatorial deadlock in 1905.

That the legislature thus elected met January 3, 1905, and adjourned March 23, 1905, without election of Senator; that a special session was called for May 31, 1905, the first vote taken on June 12, and Col. du Pont (now Senator du Pont) was elected June 13, 1906.

From all the evidence adduced Mr. Reed concluded:

The undisputed evidence shows Swain's corrupt practices, in at least one important transaction, to have been pursuant to a plan devised in the office of the Senator from Delaware. Assuming the facts to be true, as shown by the undisputed evidence, it must therefore be taken as proven that the Senator from Delaware recommended Cornelius P. Swain for the important position of United States marshal with full knowledge of his corrupt practices.

I challenge your attention to this fact, that if this testimony is true, then we are forced to the inevitable conclusion that the Senator from Delaware knew that his man Swain's hands were covered with the slime of corruption; that for 25 years he had been a defiler of the electorate of his State; that for a quarter of a century he had been a sapper and miner, digging beneath the citadels of Delaware, beneath the foundation of our civilization; and yet, nevertheless, he causes his name to be sent to this body that we may put the insignia of our approval upon the name of a man of that kind. To recommend that such a man as this should be put close to the courts of Delaware, put into the very halls of justice, given the authority to stand within the shadow of the figure of equity, to recommend that this vote buyer, this corruptionist, to be put in charge of juries and of witnesses is an offense against the Senate. If these witnesses have testified falsely, then let it be shown before a committee of the Senate. But if this evidence is true, you can not ignore it and preserve the chastity and the integrity of the United States Senate.

At the conclusion of Mr. Reed's remarks the resolution was referred to the Committee on Privileges and Elections which made no report thereon.

130. The South Carolina election case of Prioleau v. Legare in the Sixty-second Congress.

In the absence of proof to the contrary an election is assumed to have been properly held and the votes honestly counted.

The courts and not Congress constitute the proper forum in which to test the constitutionality of a State constitution.

A person on having unsuccessfully instituted five consecutive election contests the House expressed the hope that the fifth would be the last.

On August 6, 1912,¹ Mr. J. Charles Linthicum, of Maryland, from the Committee on Elections No. 2, submitted a report in the South Carolina case of Aaron P. Prioleau v. George S. Legare.

The official return gave the sitting Member 3,525 votes and the contestant 57 votes.

The notice of contest alleged in a general way that qualified citizens were denied registration and refused the right to vote because of African descent. It also averred that the constitution of South Carolina violated the fourteenth and fifteenth

¹ Second session Sixty-second Congress, House Report No. 1148; Record, p. 10307.

amendments to the Constitution of the United States, and the act of May 30, 1870, section 2004, and the act of 1868.

The committee say:

The contestee in answering denies all these averments and further asserts that the oontestee, further answering said notice of contest, alleges that the contestant, Aaron P. Prioleau, has persistently for a number of years past contested the election of contestee upon the same grounds as set forth in the present contest, and has upon each contest failed to establish the charges as set forth.

The reports of the House of Representatives show this to be the fifth, and we hope the last, consecutive contest of the contestant, all upon practically the same testimony and averments as herein.

The record in the case fails to disclose proof as to the registered vote of the district, and no information could be had on that subject at the hearing before the committee. It appears, however, that the election was held on the day set forth and that upon the face of the returns the contestee had a majority of over 3,400, and the committee must presume that the election was legal and properly held and the votes honestly counted unless the contrary can be shown.

Following this rule:

The committee is unanimous in concluding that the contestant has not shown by the evidence and exhibits produced before it that he was elected, and therefore declare that he is not entitled to a seat in the House of Representatives of the Sixty-second Congress.

As to the question of constitutionality raised by the contestant the committee further say:

The contestant further claims, however, that there was no election held, because the constitution of South Carolina is contrary to the Constitution of the United States in that it violates the fourteenth and fifteenth amendments, and likewise to the act of May 30, 1870, section 2004, and the act of 1868.

This contestant has been informed by four previous committees of the House that the forum in which to test the constitutionality of a State constitution is in the courts of the Nation, which are continuous bodies and recognize their own decisions and judgments, and not before a committee of Congress the political complexion of which is subject to change, and whose decisions are not binding upon the succeeding Congresses, not alone for political reasons but because of honest differences of opinions as to the interpretation of the provisions of the Constitution itself.

This contestant has, in disregard to the four adverse decisions by the House oi Representatives when in the control of his own party, brought this fifth contest upon the same grounds and upon substantially the same testimony as heretofore, when he knows there can be but the same result. The reason for his contest must therefore be apparent to all who care to examine the records.

The constitution of South Carolina has been in force for 17 years, thus affording abundance of time for the contestant and his biennial witnesses to test the same in the highest courts of the land, but he has constantly and persistently refused to do so. For reasons which we have assigned this committee feels that whenever it occurs in the minds of any of our citizens that the constitution and election laws of any State are in conflict with the Federal Constitution and statutes of our national organic law the courts of the land, so admirably established and safeguarded and so abundantly provided with the machinery for enforcing its decrees and mandates, is the proper and only forum for the determination of questions of this character.

Therefore the committee reported the following resolution, which, on August 16,¹ was unanimously agreed to by the House:

Resolved, That Aaron P. Prioleau was not elected a Member of the Sixty-second Congress from the first congressional district of South Carolina and is not entitled to a seat therein.

Resolved, That George S. Legare was elected a Member of the Sixty-second Congress from the first congressional district of South Carolina and is entitled to a seat therein.

¹ Journal, p. 971; Record, p. 11119; Moores' Digest, p. 54.

131. The Missouri election case of Maurer v. Bartholdt in the Sixty-second Congress.

The contestant failing to submit evidence substantiating charges made in his notice of contest, the House confirmed the title of the sitting Member.

On August 9, 1912,¹ Mr. Charles A. Korbly, of Indiana, from the Committee on Elections No. 2, submitted the report in the Missouri case of Charles J. Maurer v. Richard Bartholdt.

The report in full is as follows:

The allegations of fraud made by contestant were not sustained by the evidence adduced; in fact, no evidence whatever was presented to substantiate the charge.

The allegation that contestee was not a naturalized citizen was not sustained. On the contrary, contestee furnished incontrovertible proof, by the presentation of his naturalization papers legally issued on May 23, 1877, that he is and has been a legal citizen of the United States since that date. Therefore we beg to submit the following resolution for adoption:

“Resolved, That Hon. Richard Bartholdt is entitled to his seat as a Representative of the tenth congressional district of Missouri.”

The resolution was unanimously agreed to by the House without debate.

132. The Illinois election case of Crowley v. Wilson in the Sixty-second Congress.

Notwithstanding that the law requiring careful preservation of ballots may not have been complied with, and that opportunity to tamper with the ballots may be shown to have existed, unless evidence is produced to prove such tampering the point will not be considered.

In the absence of conclusive proof to the contrary it is presumed that all votes cast are legal votes and all voters casting them are legal voters.

On August 15, 1912,² Mr. E. F. Holland, of Virginia, from the Committee on Elections No. 1, submitted the report in the Illinois case of Fred J. Crowley v. William W. Wilson.

The sitting Member in this case had received according to the official returns a plurality of 57 votes. After notice of contest had been served a recount was agreed upon and made before a notary public before whom testimony was taken, which further increased the plurality of the contestee to 124 votes.

The first objection advanced by the contestant was that the ballots from the election districts outside of the city of Chicago were negligently and insecurely kept, and were thus constantly exposed to tampering. This seems to have been conceded, but as no evidence was adduced to show that they were in fact tampered with in any way the committee reported:

The Illinois statutes provide merely that ballot boxes, with ballots and returns, shall, after election, be carefully preserved. The ballot boxes were in this case in the custody of the proper authorities, and while the manner of their keeping may have afforded some slight opportunity for

¹Second session Sixty-second Congress, House Report No. 1168; Journal, p. 946; Record, p. 10623; Moores' Digest, p. 54.

²Second session Sixty-second Congress, House Report No. 1195; Journal, p. 963; Record, p. 11025; Moores' Digest, p. 57.

tampering with them, there is not the slightest evidence in this case that a single ballot box, ballot, or return was, in fact, tampered with.

As to certain ballots inspected by order of court:

In regard to the 21 ballot boxes opened by order of the judges of the county court of Cook County, it is sufficient to say that the ballot used in elections in the State of Illinois contains the names of candidates for State, county, and municipal offices as well as the names of congressional candidates. These ballot boxes were opened by order of the court in a competent proceeding under the State laws to ascertain the vote upon a certain question submitted to the voters of a district, and to ascertain the vote for a candidate for the office of probate judge, and they were opened in the presence of the court, and the evidence is conclusive that they were not tampered with in any way.

The contestant also alleged that 100 men voted illegally in the town of Worth, one of the country districts of the congressional district.

The law of the State of Illinois provided:

No vote shall be received at any election in this State if the name of the person offering to vote be not on said register * * * unless the person offering to vote shall furnish to the judges of the election his affidavit in writing stating therein that he is an inhabitant of said district and entitled to vote therein at such election, and prove by oath of a householder and registered voter of the district in which he offers to vote that he knows such person to be an inhabitant of the district, * * * giving the residence of such person within the said district. (Ptd. Rec., 166.)

The law also provided that such oaths should be preserved, and the contestant contended that while the poll books of the Worth district showed that 100 men voted who were not registered, their oaths, if ever taken, had not been preserved as required by law.

The committee say:

The only witness produced by the contestant upon the matter of these nonregistered voters was the election clerk in the office of the county clerk of Cook County, one of the places where the affidavits of nonregistered voters may be filed under the law. He testified that the poll book used at the election in the district in question contained the names of 100 persons with a mark "IN. R." after their names, which he supposed meant "not registered." He further testified that the envelope in which affidavits of nonregistered voters should be returned was with the poll book, unused and empty. He further testified that he made a search for the affidavits in the election vault of the county clerk's office and did not find them. He, however, admitted that the affidavits of nonregistered voters are not always in the envelopes prepared for them when returned, and he said in answer to the question, "Is it not possible, Mr. Zurburg, that these affidavits may be somewhere in the office with some of the returns of that election?" "They may and may not; I can not tell."

No election official of the district was produced as a witness to prove that votes were received from nonregistered persons without affidavits as required by law; the registry lists were not produced to show by comparison with the poll books that all the names marked "N. R." were nonregistered persons; and there was no evidence to show that the affidavits of all nonregistered voters in the district might not be in some lawful place of custody other than the office of the county clerk.

The presumption is that all votes cast are legal votes and that all persons casting them are legal voters. In the absence of conclusive proof that the 100 votes of alleged nonregistered voters in the district were fraudulent we can not reject them and throw out the district. The contestant has utterly failed in this proof.

Accordingly the committee reported a resolution confirming the title of the sitting Member to the seat which was unanimously agreed to by the House without debate or division.

133. The Iowa election case of Murphy v. Haugen in the Sixty-second Congress.

Where some of the ballots were missing a recount was denied.

No evidence of error in the counting of the votes having been adduced, the committee denied an application for a recount.

On August 16, 1912,¹ Mr. Henry M. Goldfogle, of New York, from the Committee on Elections No. 3, submitted the report in the Iowa case of Daniel D. Murphy v. Gilbert N. Haugen, as follows:

There appeared no evidence that any error was committed in the counting of the votes for Representative in Congress in the fourth congressional district of Iowa. It was, however, claimed and strongly asserted by the contestant that were the boxes opened and the ballots cast in said district recounted, it would be found that the contestant, Murphy, had received a majority of the lawful votes in said district for Representative in Congress. It appears that the ballots on which the names of candidates for various offices were printed, including those of the parties to this contest, had been recounted in one of the contests for local office. Some of those ballots, after they had been handled on such recount in Iowa, had not been preserved, so that in justice to all the parties they could have been examined to ascertain their validity and be recounted. The proof requisite to establish the integrity of all the ballots cast in the entire congressional district was lacking. This was due, it ought in fairness be said, to no fault whatever on the part of either the contestant or his learned and distinguished counsel. Under all the circumstances of this particular case, as they were developed on the hearings, the committee, applying the authorities as they obtain in the House of Representatives, felt themselves constrained to deny the application for a recount.

Therefore the committee reported a resolution declaring the returned Member elected and entitled to the seat.

The resolution was unanimously agreed to by the House without debate.

134. The West Virginia election case of Wiley v. Hughes in the Sixty-second Congress.

Counsel for contestee having admitted the justice of contestant's contention that certain returns ought to be excluded on account of fraud, it was held that the vote from those precincts should not be counted for either contestant or contestee.

Although the court refused to appoint challengers for both parties as required by law, and challengers attempting to serve were driven from the polls, the absence of challengers is not of itself sufficient to establish fraud.

The original existence of a certificate of naturalization being established, it was held competent to prove its contents by oral evidence.

Instance wherein leave was given to take further testimony and produce additional evidence after briefs had been filed and arguments, heard.

¹ Second session Sixty-second Congress, House Report No. 1203; Journal, p. 973; Record, p. 11128; Moores' Digest, p. 58.

On August 20, 1912,¹ Mr. J. Harry Covington, of Maryland, from the Committee on Elections No. 1, submitted the report in the West Virginia case of Rankin Wiley v. James A. Hughes.

The sitting Member had been returned by an official majority of 2,942 votes.

The counsel for contestant and contestee in their briefs and by oral agreement eliminated practically every question in this case with the exception of the charges of fraud in the nine precincts in Mingo County and in McDowell County, and the question of the citizenship of the contestee.

The report says, as to Mingo County:

During the course of the argument Mingo County was eliminated as a factor in this case by the admission of counsel for the contestee that fraud was committed in that county in the interest of the contestee, and that it was so flagrant and outrageous that the returns from the nine precincts where the frauds were perpetrated ought to be excluded in counting the vote for the contestant and contestee.

As to McDowell County:

McDowell County is located immediately east of Mingo County. Its population is largely made up of foreigners and negroes who are employed in the various coal developments of the county. All of the county officers are Republicans. The county court, which appoints the election commissioners, is composed of Republicans, and the testimony in the case shows conclusively that the method of conducting elections in the county make it a most fruitful place to perpetrate wholesale election frauds. The testimony shows that the president of the county court, one Dr. H. D. Hatfield, who is also president of the Senate of West Virginia, refused to appoint challengers for the Democratic Party at the various voting precincts of McDowell County, although the law of West Virginia seems clear that the county chairman of the two leading political parties shall nominate and the county court shall appoint challengers of election. The testimony shows that this Dr. Hatfield was very active in the actual conduct of the election in McDowell County, and the refusal to appoint Democratic challengers raises a strong presumption that the conduct of the election was to be neither fair nor honest.

The committee decide, however:

However, the absence of challengers from the voting precincts is not of itself actual proof of fraud. The contestant relies upon the failure of the county court to appoint challengers of his party, upon the evidence that where democratic challengers attempted to serve they were either arrested or driven from the polls, and upon his own testimony that general political conditions were such in McDowell County that he had been warned not to go into the county to make speeches for fear of personal violence, to establish such a general conspiracy to defraud as warrants the rejection of the entire vote of McDowell County. With that proposition the committee is unable to agree. The circumstances are all strong as showing a deliberate intention to commit fraud in the interest of the contestee. On the other hand, there is no actual proof of a fraudulent vote in the county, and we can not reject the vote.

The question of citizenship is thus discussed by the report:

We now come to the question of the qualification of the contestee to hold the office of Representative in Congress.

Article I, section 2, of the Constitution of the United States, provides:

"No person shall be a Representative who shall not have attained the age of 25, have been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that State in which he shall be chosen."

¹Second session Sixty-second Congress, House Report No. 1229; Journal, p. 994; Record, p. 11194: Moores' Digest, p. 58.

The record in this case discloses that James A. Hughes, the contestee, was born in Canada, in 1861, and was a subject of Queen Victoria; that he removed to the United States some time in the year 1872 and moved some time later to Boyd County, Ky. He claimed that he was naturalized in the city court of Boyd County, Ky., in 1882, by one W. W. Culbertson, who was then mayor of Ashland, Ky. The records of the city court of Ashland are extant and an examination of them from 1882 to 1890 shows that there is no record of such naturalization existing.

There was no evidence offered by the contestee to show the original existence of such a record, and that such record has been lost or destroyed. In consequence there was no legal foundation for the introduction of secondary evidence to prove the actual existence of such a lost or destroyed record of naturalization.

The contestee, on the 5th day of November, 1900, on the evening of general election of that year, at which time the said contestee was a candidate, filed a petition and affidavit, which appears on pages 443 to 444 of the record, and an order was made by the circuit court of Cabell County, W. Va., declaring that "the said James A. Hughes be, and he is hereby, declared to be a naturalized citizen of the United States."

The proceeding in the West Virginia court was, however, wholly void. If it be considered from the viewpoint of a proceeding to naturalize the applicant in the first instance, it failed, because there was no effort to produce the witnesses required by the Revised Statutes of the United States to authorize naturalization in the first instance. It obviously failed as an effort to perpetuate an alleged existing naturalization because the courts of one State have no power, by a *nunc pro tunc* order or otherwise, to perfect or cure defects in an original order or decree of the court of another State, nor can the court of one State by any supplemental proceeding perpetuate the missing records of the court of another State.

After briefs had been filed and the case had been argued before the committee, the contestee asked leave to take further testimony and produce additional evidence on this point.

On February 10, 1912,¹ in compliance with this request, the House agreed to the following resolution:

Whereas the contested-election case of Rankin Wiley *v.* James A. Hughes, from the fifth district of West Virginia, was referred to the Committee on Elections No. 1, and after the testimony and briefs of counsel were filed with said committee, and after counsel had fully argued and commented upon the same, counsel for the contestee requested leave of said committee to take the testimony of sundry witnesses and to produce additional evidence relative to the said contestee's citizenship: Now therefore be it

Resolved by the House of Representatives, That the Committee on Elections No. 1 shall be, and hereby is, authorized and empowered to permit the taking of such testimony as it shall deem relevant to better enable the said committee to determine the question of citizenship involved in the contested case of Wiley *v.* Hughes, from the fifth congressional district of West Virginia, and that the expenses incurred in taking such testimony shall be paid in the same manner as the other expenses incurred in the taking of testimony in this and similar cases.

After consideration of the additional evidence produced by authority of this resolution, the committee concluded:

The contestee, if not now a citizen, can not become one for five years, and the seriousness of the question impelled the committee to direct the taking of additional testimony on the question of his citizenship. As a result of that course it was proved by the contestee by competent and legal evidence that there was at one time in existence a legal and sufficient certificate of naturalization issuing from the court in Ashland, Ky., in which he claimed in his answer in this contest to have

¹ Journal, p. 291; Record, p. 1915.

been naturalized. The original existence of this certificate having been proved, it was legally competent for the contestee to prove its contents by oral evidence. The committee feels that this has been satisfactorily done, and in view of the fact the contestee since his alleged naturalization has served as a member of the Legislature of the State of Kentucky, as a member of the State Senate of the State of West Virginia, and for 12 years a Member of the House of Representatives of the United States, his citizenship has been sufficiently established in accordance with the precedents of the House, to prevent a denial to him of a seat as a Representative from the State of West Virginia in the present Congress. In consequence we report the adoption of the following resolution:

“Resolved, That James A. Hughes was elected a Representative in the Sixty-second Congress from the fifth district of West Virginia, and is entitled to a seat therein.”

The resolution reported by the committee was agreed to without division or debate.

135. The Missouri election case of Kinney v. Dyer in the Sixty-second Congress.

The evidence failing to sustain allegations of fraud and intimidation, the title of sitting Member to the seat was confirmed.

On January 30, 1913,¹ Mr. John M. Nelson, of Wisconsin, from the Committee on Elections No. 2, submitted the report in the Missouri case of Thomas E. Kinney v. L. C. Dyer.

In this case general charges of fraud and intimidation were made in the notice of contest, but as no evidence was submitted tending to prove them the committee reported:

The allegations of fraud and intimidation made by contestant were not sustained by the evidence adduced.

Therefore we beg to submit the following resolution for adoption:

“Resolved, That Hon. L. C. Dyer is entitled to his seat as a Representative of the twelfth congressional district of Missouri.”

The resolution was unanimously agreed to by the House without debate.

136. The Pennsylvania case of Bonniwell v. Butler in the Sixty-second Congress.

Instance wherein a memorial was referred to an election committee and on recommendation of the committee was laid on the table.

A committee of the House has no jurisdiction to determine any matter affecting rights to a seat in a succeeding Congress.

The jurisdiction of the House of Representatives over election matters is limited to the constitutional right to judge election returns and qualifications of its own Members, and does not extend to elections in general.

On February 15, 1913,² Mr. J. Harry Covington, of Maryland, from the Committee on Elections No. 1, submitted the report in the Pennsylvania case of Eugene C. Bonniwell v. Thomas S. Butler.

¹Third session Sixty-second Congress, House Report No. 1422; Journal, p. 201; Record, p. 2327; Moores' Digest, p. 60.

²Third session Sixty-second Congress, House Report No. 1523; Record, p. 3215.

The case originated in the House with the transmission to the Speaker on December 14, 1912, of the following communication:

WAYNE, PA., December 14, 1912.

*Hon. Champ Clark, Speaker of the House of Representatives, and
Members of the House of Representatives,
Washington, D.C.*

GENTLEMEN: I hereby file notice of objection to the right of Thomas S. Butler to represent the seventh congressional district of Pennsylvania in the Sixty-third Congress and assign the following reasons:

First. The seventh congressional district of Pennsylvania is composed of Chester and Delaware Counties. To procure a majority upon the face of the election returns at the election held November 5, 1912, certain agents of the Republican organization of this district, in the service of and on behalf of Thomas S. Butler, the nominee herein, and certain other nominees, did, by fraud and perjury, falsely preempt upon the official ballot of the State of Pennsylvania two titles, one being "Bull Moose" and the other "Roosevelt Progressive." Each title was intended and designed to deceive and mislead the voter whose intention was to vote the ticket upon which Theodore Roosevelt was a candidate, to wit, the Washington Party of Pennsylvania. To accomplish these ends these men forged alleged preemptors' names to the certificates of preemption. They forged hundreds of names in order to place the names of Thomas S. Butler for Congress and William C. Sproul for State senator and the Republican candidates for the State legislature upon these two false and pretended Progressive tickets. They forged these names alphabetically, without even the feeble pretense of disguising the handwriting. They forged signers to the affidavits required at the ends of these nomination papers. They impersonated the affiants before the justice of the peace. These facts were known to Thomas S. Butler. Objections, under the ballot laws, were filed to the right of these fraudulent pretenders to masquerade as supporters of Roosevelt by the real Washington Party nominees. Copies of the objections were served upon Thomas S. Butler and the other candidates. Thomas S. Butler and the other candidates appeared in the Dauphin County court answering such summons and maintained their right to remain upon the perjured and forged tickets. The objections were dismissed upon a technicality, and Mr. Butler continued thereon in the face of the glaring frauds. Thereafter and prior to the election, seven men, active in the councils of the organization supporting Thomas S. Butler, were arrested upon the charges of forgery and perjury and held in bail for court. Despite the convincing evidence, Thomas S. Butler willingly shut his eyes to the nauseous scandal. Funds were supplied by the men interested to the fraudulent committees masquerading as Progressives. The seventh congressional district was circularized by letter falsely asserting that the Bull Moose ticket was the only genuine Roosevelt ticket in the seventh district, and thereby upward of 4,332 voters were deceived and misled into voting for Thomas S. Butler for Congress.

It is submitted that the perjury and corruption herein averred was the result of a deliberate conspiracy on behalf of the organization leaders whose candidate Thomas S. Butler was. He was cognizant of its details long before election. He approved of the forgery and perjury by remaining a candidate upon the said ticket after public notice. That these acts of themselves disqualify him from membership in the House of Representatives of the United States.

If further reason be deemed essential that this conspiracy went to the vitals of this election, let the pollution of the grand jury of Delaware County at this December session of court speak for itself. The bills of indictment charging the seven men with perjury and forgery were to be submitted to this December grand jury. The sheriff of Delaware County is S. Everett Sproul, brother of State Senator William C. Sproul, the Republican leader of Delaware County, and, with Thomas S. Butler, most concerned in these nominations. The grand jury, always the bulwark of the people's liberties, was prostituted by politicians to save their tools from conviction. Twelve false jurors, not drawn or entitled to serve, 6 of them members of the Republican county committee, 2 more relatives of Republican officials, were secretly added to the 11 bona fide jurors, and this corrupted jury sought to destroy justice in its very temple by ignoring the indictments against the forgers and perjurers, and so make a mockery of the law. This treacherous body, not content with dismissing every indictment laid against the corruptionists, to terrorize future men temerarious

enough to assail their vicious acts, imposed over \$700 in costs upon J. Watts Mercur, the fearless citizen who brought these prosecutions, Washington Party nominee for State senator, against William C. Sproul. That 12 jurors were illegal Mr. Mercur discovered. Upon the fact being presented to the court of common pleas of Delaware County, the dishonest grand jury was summarily dismissed, all indictments recalled, and a sweeping investigation set upon foot. It was public knowledge that this contest was to be instituted, based upon these frauds. It can not be doubted that one of the chief aims of the men most concerned was to destroy this ground for contest. This pollution of justice merits the expulsion of this Representative from the Halls of Congress.

Second. That the expense accounts filed in this district are false and fraudulent; that money, thousands of dollars, unaccounted for by any candidate or committee, was expended in the seventh district on behalf of the Republican candidates, Butler and Sproul in particular, as will be shown upon the hearing of this contest.

Third. That a committee especially organized by personal friends of Thorn S. Butler, styled the Butler League, composed and caused to be published false and libelous articles concerning the contestant.

Fourth. The West Chester Village Record is a local newspaper largely owned and controlled by T. L. Eyre, Republican boss of Chester County and personal representative of Thomas S. Butler.

The Chester Republican is a local paper largely owned and controlled by Senator William C. Sproul, Republican boss and personal representative of Thomas S. Butler in Delaware County. On August 15, 1912, the West Chester Village Record published the following editorial:

"The Hon. Thomas S. Butler, the Republican nominee for Congress, was born and reared in the Society of Friends, and is proud of his Quaker ancestry. His opponent, Eugene C. Bonniwell, is a Roman Catholic."

On August 28, 1912, the Chester Republican reprinted this editorial. Coincident with the two said editorials messengers in the employ of supporters of Thomas S. Butler traversed the district, having in their possession and circulating a blasphemous and infamous libel, a copy of which is hereto attached, pretended to be an oath of the Knights of Columbus, of which body the contestant is a member. So revolting are the terms of this document and so nauseating its pledges that the injury it did not merely to the contestant, but also to the Knights of Columbus and to Catholics in general, can hardly be measured in terms.

I charge that the circulation of this oath and the publication of the two editorials herein referred to were part of a conspiracy, precisely as was the forgery and perjury referred to in paragraph 1—a conspiracy by the same people for the purpose of arousing religious rancor and of defeating the Democratic nominee. The Constitution of the United States prohibits any religious test for office. The organization supporting Thomas S. Butler created such a test, blazed bigotry in the hearts and minds of the ignorant, and slandered and villified a great body of honorable men.

I file no complaint because of adverse election returns. The Democracy of Pennsylvania is inured to adversity. Nor is this complaint registered because of defeat resultant upon faith or race. In these things I own a just pride and do not protest if, because of either, political honors are to be denied me. But when a calumnious, viperish attack upon either faith or race is launched injecting religious bigotry into the political affairs of this Nation, then this protest is made in certain confidence that all patriotic men, mindful of the religious as well as the political liberty that the forefathers designed should be our heritage, will rise and strike down the beneficiary of such treacherous and dastardly movement.

For myself I make no appeal to your honorable body that I may be seated. That a plurality of the legal votes cast in that district were cast for me no one pretends to deny, but representations is the least of my concerns. This I do maintain, that this man, receiving his election under these circumstances, adding the felonies of forged papers, perjured acknowledgments, and violated grand jury to the more wicked crime of religious slander, ought not to be tolerated in the House of Representatives.

Respectfully submitted.

EUGENE C. BONNIWELL.

Mr. Bonniwell was the Democratic candidate for the House of Representatives in the seventh congressional district of Pennsylvania at the election held November 5, 1912.

Mr. Butler promptly filed an affidavit in the nature of an answer denying in detail the charges preferred in the communication.

The Speaker,¹ on January 17, 1913² referred both communications as follows.

The Chair has in his possession two communications. One of them purports to be a notice of contest by Eugene C. Bonniwell against Mr. Butler, of the seventh Pennsylvania district. On examination of the document, however, it turns out not to be a notice of contest but to be something more in the nature of a memorial to this House, setting forth that the gentleman from Pennsylvania (Mr. Butler) ought to be expelled from the House. The Chair also has a copy of the reply of the gentleman from Pennsylvania [Mr. Butler], and without consuming any more time the Chair refers both papers to the Committee on Elections No. 1.

Notices to appear before the committee were addressed to both parties. Mr. Butler appeared before the committee as requested and denied specifically all charges contained in the memorial. Mr. Bonniwell did not appear before the committee but transmitted to the chairman a letter asking for a report on the question of the committee's jurisdiction.

This question the committee discuss as follows:

This committee, of course, has no jurisdiction to determine any matters affecting the right of any person to a seat in the House of Representatives in the Sixty-third Congress. It does not, therefore, attempt to pass upon any question involved in any valid contest which may have been instituted against the said Thomas S. Butler by the said Eugene C. Bonniwell of anyone else, alleging that he and not the said Thomas S. Butler is the duly elected Representative from the seventh congressional district of Pennsylvania in the Sixty-third Congress.

The communication, however, is thus passed upon by the committee:

However, from a careful examination of the document filed by Mr. Bonniwell, it appears that the Speaker was entirely correct in declaring that it is a paper in the nature of a memorial to this House alleging certain sets and conduct by persons for which Representative Butler, it is asserted, should be expelled.

The paper, or memorial, is addressed to "Hon. Champ Clark, Speaker of the House of Representatives, and Members of the House of Representatives, Washington, D. C."

The only Congress in which Mr. Clark is or ever has been Speaker of the House of Representatives is the present or Sixty-second Congress, and the only "Members of the House of Representatives" in being are the Members of this House.

It is true that the paper of Mr. Bonniwell begins with the statement:

"I hereby file notice of objection to the right of Thomas S. Butler to represent the seventh congressional district of Pennsylvania in the Sixty-third Congress."

But, in the said paper Mr. Bonniwell distinctly states:

"I file no complaint because of adverse election returns"—

And—

"For myself, I make no appeal to your honorable body that I may be seated.

The paper of Mr. Bonniwell being filed with this House, and the author disclaiming that it is filed as a notice of contest in which he intends to claim the seat of Representative Butler in the Sixty-third Congress, and it containing such allegations against Representative Thomas S. Butler, the sitting Member from the seventh congressional district of Pennsylvania, as follows:

¹ Champ Clark, of Missouri, Speaker.

² Journal, p. 131; Record, p. 1688.

“This pollution of justice merits the expulsion of this Representative from the Halls of Congress”—
And—

“This man receiving his election under these circumstances, adding the felonies of forged papers, perjured acknowledgments, and violated grand jury to the more wicked crime of religious slander, ought not to be tolerated in the house of Representatives”—

the committee has felt it to be its duty to examine with some care the document to ascertain whether there are any charges made against Representative Butler which warrant reporting to this House a resolution recommending his expulsion.

Charges preferred by the communication are thus disposed of:

The paper of Mr. Bonniwell is adroitly drawn, but when analyzed it is found to be one of innuendo and not of direct charge. It refers to perjury and forgery in connection with the nominations of Representative Thomas S. Butler and candidates for local offices in Chester and Delaware Counties, Pa., and asserts that these crimes of perjury and forgery were committed through a conspiracy. But there is no charge that Representative Butler committed or furthered the perjury or forgery or took part in the alleged criminal conspiracy.

The paper of Mr. Bonniwell further refers to an alleged pollution of the grand jury of Delaware County, Pa., after the election of 1912, and at a time when certain election officials were about to be indicted for alleged offenses at that election, but there is no actual charge that Representative Butler participated in, furthered, or was even cognizant of the alleged conspiracy to pollute the grand jury.

The paper of Mr. Bonniwell alleges that a committee especially organized by the friends of Thomas S. Butler, styled the “Butler League,” composed and caused to be published false and libelous articles concerning Mr. Bonniwell. It will be noted that it is not charged that said false and libelous articles were either prepared or published by Representative Butler or that he even had knowledge of their publication. It merely charges that these publications were made by the personal friends of Hon. Thomas S. Butler. This allegation, if true, might make “the personal friends” of Representative Butler guilty of a crime; but it certainly could not make Representative Butler himself guilty of a crime.

The paper of Mr. Bonniwell further alleges that “The West Chester Village Record is a local newspaper largely owned and controlled by T. L. Eyre, Republican boss of Chester County and personal representative of Thomas S. Butler,” and that this newspaper published an editorial calling attention to the religion of the said Eugene C. Bonniwell, and that this editorial was republished in the Chester Republican for the purpose of arousing religious rancor and defeating the Democratic nominee, Mr. Bonniwell.

137. The case of Bonniwell v. Butler, continued.

It is the uniform practice of the House not to investigate charges of crime against a member when denied by him and subject to prosecution in the courts.

Libelous abuse of a defeated candidate by party adherents of the returned Member for which the latter is in no way responsible does not furnish grounds for contest.

A memorial of an equivocal character, not considered sufficiently definite to be dismissed, was laid on the table.

As to criminal charges against a Member of the House the report holds:

The paper of Mr. Bonniwell asserts that Representative Butler has filed a false and fraudulent expense account under the State law as a candidate for election as a Representative in the Sixty-third Congress. This, if true, charges a crime against Representative Butler, but we find that there is provided ample machinery under the laws of Pennsylvania to try that charge. It has been the uniform practice of this House not to investigate a charge of crime against a Member

where it has been denied by him and where he can be legally prosecuted in the courts. If Representative Butler shall be prosecuted under the corrupt practices act of Pennsylvania and shall be found guilty, then an entirely different proposition may arise upon which to memorialize either this House or the House of the Sixty-third Congress.

The report condemns:

This committee can not condemn too strongly the publication of the false and libelous article referred to in the paper of Mr. Bonniwell and which was the spurious Knights of Columbus oath, a copy of which is appended to the paper. It also condemns the publication of editorials to excite religious prejudice in a political campaign. No man should be prosecuted for his religion, whether he be Catholic or Protestant. However, it is not alleged in the paper that Representative Butler published or caused the publication of either the false oath or the prejudiced editorials.

The jurisdiction of the committee is defined:

This committee does not intend either to inculcate or to exculpate those who conducted the campaign and election in the counties of Chester and Delaware, in Pennsylvania, in 1912. The campaign and the election in general are not proper subjects for investigation by the House of Representatives of the United States. The jurisdiction of the House of Representatives in such matters is based solely upon Article I, section 5, of the Constitution of the United States providing:

"Each House shall be the judge of the elections, returns, and qualifications of its own Members, punish its Members for disorderly behavior and, with the concurrence of two-thirds, expel a Member."

Under that power the House considers contests against the seat of a Member holding a certificate of election and memorials against a sitting Member or a Member about to take his seat under his certificate of election charging him with offenses which if true justify his expulsion from the House. The committee has already stated that it has no jurisdiction over any contest filed by anyone claiming the seat from the seventh congressional district of Pennsylvania in the Sixty-third Congress.

In conclusion the committee recommend:

Upon a careful consideration of the paper in the nature of a memorial filed by Mr. Bonniwell, and other papers and evidence therewith, the committee report that there is nothing shown or alleged against Thomas S. Butler which disqualifies him from holding his seat in the Sixty-second Congress.

The committee therefore recommends the adoption of the following resolution:

"Resolved, That the memorial of Eugene C. Bonniwell against Thomas S. Butler, dated December 14, 1912, addressed to and filed with the Speaker of this House, be laid upon the table."

In debate on February 19,¹ Mr. Henry M. Goldfogle, of New York, took the position that the proper practice was to dismiss the memorial.

In reply, Mr. Covington said:

I will inform the gentleman from New York that in view of the equivocal character of the paper filed by Mr. Bonniwell the committee thinks the proper thing to do is to lay it on the table. We entertained it as a memorial, and we report that in so far as this House is concerned it contains nothing which warrants the committee in presenting a resolution to vacate the seat of Representative Butler in this House. We had nothing to do with whether or not there is pending any contest, and thought it proper to provide simply that the memorial do lie upon the table.

Thereupon, the resolution recommended by the committee was agreed to by the House without division.

¹ Journal, p. 277; Record, p. 3431; Moore's Digest, p. 60.