36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 87.

MICHIGAN CONTESTED ELECTION.

MARCH 15, 1860.—Ordered to be printed, and its further consideration postponed until Tuesday next.

Mr. CAMPBELL, from the Committee on Elections, made the following

REPORT.

The Committee on Elections, to whom was referred the petition of William A. Howard, contesting the right of the Hon. George B. Cooper to a seat in the 36th Congress as a representative from the first congressional district of Michigan, submit, as a special report—

That they have considered an application made by the sitting member to them to ask of the House, in his behalf, leave to allow further testimony to be taken, pursuant to the proviso in the 9th section of the act of February 19, 1851. This being an application amounting to a continuance of the cause until a future day, it was deemed proper to settle it before deciding upon the merits of the case as presented in the issues, the allegations, and proofs of the respective parties.

Mr. Cooper presented this application on the 5th of March instant, more than *sixteen months* after the election was held, and more than *fourteen months* after notice of contest; more than thirteen months after his answer had been served upon the contestant; more than eleven months after the time for taking testimony under the law had expired, and after one-half of the time of the service of the Congress had elapsed; he never having previously examined any witness or taken any testimony in his own behalf, or given any notice of his intention or wish to do so. And yet it appears he was present by counsel more than eleven months before he made this application, at the taking of all the testimony in the case, and cross-examined every one of contestant's witnesses, but offered none of his own.

If this does not present a clear case of *laches* on the part of the sitting member, the committee are at a loss to know what conceivable state of facts would make one.

The memorial or application of the sitting member is accompanied by twenty-nine *ex parte* affidavits, (taken without notice to contestant,) and embraces two distinct requests, urging that one or the other be granted, viz:

First. That the affidavits be received as evidence in the cause, and made part of it; or, if this cannot be done, then—

Secondly. That such time be granted as will enable the sitting

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member to take the necessary steps to secure the testimony of the witnesses embraced in the affidavits. The contestant resisted this application, and read and filed an argument with the committee. The memorial, the said affidavits, and the arguments are herewith submitted.

In support of the application, the sitting member seems to rely mainly on the fact that the testimony in the cause was taken during the last part of the time allowed by law for examining witnesses. But the act of Congress referred to provides for taking testimony by both parties at the same time, by requiring the notice of contest and answer to state fully the grounds upon which the parties rely, and also that ten days' notice of the time and place of taking testimony, and the names of all witnesses, besides authorizing both parties to appear by agent or in person, as they may see proper.

In the case of Vallandigham *vs.* Campbell the committee said, and they were sustained by the vote of the House, "*however extensive the time covered by one party in proposing to take testimony, it in nowise precludes the opposite party from proceeding at the same time to take it in his own behalf.*"

In that case testimony had been taken the very last day by the contestant, and his notices not only covered almost all the time allowed by law, but he had so laid them one upon another as to employ "*the full period of sixty-six days.*" In the case now under consideration only twenty-two days of the sixty allowed by law were consumed by contestant for all his notices and the taking of his testimony. The sitting member could have had the exclusive use of thirty-eight of the sixty days, and he was in no way "*precluded*" from proceeding to take testimony in his own behalf during the other twenty-two days covered by the operations of contestant. The committee regard much that is stated in the subjoined affidavits as irrelevant and immaterial. If they were legal testimony, they are not aware that they contain any newly-discovered evidence, or one single fact that could not, with ordinary diligence, have been as fully and as easily proven in March, 1859, as in March or April, 1860.

In the case above referred to of Vallandigham *vs.* Campbell the committee express the "*opinion that if either party to a case of contested election should desire further time, and Congress should not be then in session, he should give notice to the opposite party, and proceed in taking testimony, and preserve the same, and ask that it be received, and, upon good reason being shown, it doubtless would be allowed; but it seems too much to grant in this case, for either of the reasons stated.*"

This report, as already stated, received the sanction of the House. In the case now under consideration there was not only no attempt to take any testimony during the time fixed by law, and none after its expiration and before the meeting of Congress, but this application is not made until some weeks after the organization of the House. To grant such postponements and protracted appointments for taking additional testimony, after the meeting of Congress, and after both parties have had *equal* and *sufficient opportunity* to present their full case, is practically to *nullify the law*, to render the right of contesting a seat in Congress *useless and nugatory.* If such application rests upon no stronger reason than the laches of the party making the

same, it should be promptly rejected. To do otherwise is to disregard the rights of parties and constituents, to trifle with the privileges of the House, and to make the labors of your committee interminable and useless. It is due to every interest concerned that the rights in dispute should be settled and parties held to reasonable diligence, under the laws of the land, in the prosecution and presentation of their respective claims.

Your committee are therefore of opinion that no further time should be allowed to take supplemental testimony in the case. At the request, however, of the sitting member, in order that the question may be presented to the House, your committee report the following resolution:

Resolved, That it is inexpedient to allow further time to take testimony in the case of William A. Howard, contesting the right of Hon. George B. Cooper to represent the first congressional district of Michigan in this House, as asked for by the sitting member.

JAMES H. CAMPBELL.
H. L. DAWES.
ROBERT McKNIGHT.
GILMAN MARSTON.
JOHN L. N. STRATTON.

To Messrs. John A. Gilmer and his Associates of the Committee of Elections of thf House of Representatives.

The undersigned, member of the House of Representatives from the first congressional district of the State of Michigan, respectfully submits the following statement:

That he was duly elected a member of the thirty-sixth Congress for said district on the 2d of November, 1858, as appears by the certificate issued to him by the board of canvassers of said State. That on the 28th of December of said year, he was served with a notice from William A. Howard, esq., stating that his seat in said Congress would be contested by him, for reasons mentioned in said notice; to which notice and statement he returned an answer on the 26th of January, 1859. That on or about the date of said answer he left the State of Michigan and came to this city, and went from thence to the State of New Jersey, where he remained until some time in the month of May following, being detained there during a considerable portion of the intervening time by sickness. That during said period, to wit: on the 21st of February and the 11th, 15th, and 16th of March, notices were served upon his attorney, stating that the testimony of numerous witnesses, the names of whom were given in said notice, touching the claim of said contestant, would be taken at Detroit on the 21st day of said March. That being unable, by reason of sickness, to attend personally at Detroit, he wrote to G. V. N. Lothrop, esq., an attorney at that place, requesting him to appear for him; that said Lothrop was prevented by other professional engagements from attending at the examination of said witnesses, except for a brief period; and that the

attorney employed in his stead had not received sufficient information from the undersigned to enable him fully to protect his rights; that being absent from the State he had no opportunity to suggest such inquiries upon the cross-examination, tending to elicit the whole truth from the witneses, as his more intimate knowledge of his case would have prompted; and that as the testimony was taken upon the last week and day during which, by the provisions of the act of Congress relating to the taking of testimony any testimony could be taken, he was precluded from summoning witnesses to explain or rebut such portion of the contestant's testimony as he desired to answer; and that he verily believes, if reasonable time were allowed therefor, he could fully explain and disprove all the statements contained in the depositions now before the committee affecting the validity of the returns made to the canvassing board; and that, in fact, he is now in possession of additional and positive proof that half the number of those stated by Sylvester Larned to have been illegal voters, were, in fact, duly qualified legal voters in the second ward of Detroit; that the disorderly conduct said to have been exhibited at the polls in the second ward was greatly exaggerated; and that the quarrelling between David Crosby and others near the polls grew out of personal and private disputes, and in no way interfered with the safety or rights of others; and that he has the affidavits of Charles J. Walker and I. L. Chipman, both gentlemen of character and veracity, which state that the election in the second ward was orderly and peaceful. Mr. Walker states that "he was at the second ward polls most of the day, an interested and careful observer of the manner in which the election was conducted; that he never saw a warmly contested election conducted more civilly. There were no threats or violence that could or did deter any voter from depositing his vote."

The undersigned further states, that in respect to the irregularities alleged to have been practiced in the fifth ward, as testified to by Alexander H. Stowell and A. K. Edgar, he has the deposition of G. D. Ellwood, of Detroit, which avers that in January, 1859, said Stowell came to him and said he wanted a place in the custom-house, at a dollar a day; that if successful in getting said place, he was able to show and would show that a large number of illegal votes were cast for William A. Howard for Congress in the fifth ward; that he would do the same in other portions of the district, exhibiting at the same time a list of names of illegal voters in the fifth ward and other places at the election, all of whom he said had voted for William A. Howard, as he could prove; that said deponent was present, and heard the testimony given in relation to said fifth ward, and that the names of illegal voters sworn to by David A. Smith and A. K. Edgar, as voting for Mr. Cooper, are the same names which were exhibited by Stowell, and which he then proposed to prove voted illegally for Mr. Howard.

The undersigned would further state that he has the deposition of G. T. Weller, of said Detroit, which states that in the spring of 1859 he met Andrew K. Edgar, who asked him if he knew George B. Cooper; before he said this he asked the deponent if he had seen Stowell; that he had a list of names which was worth $300; that

Stowell could make that out of it, and he intended to make the same; that this list contained seventeen names; some of them he said were names from the country, some from the city. He said that these men had all voted for William A. Howard; that he was after money now, not friends, and that if he kept the papers himself he could make $300; that Stowell was trying to get them away from him; and then asked my partner, Mr. Goodrich, who was present, to see Mr. Cooper and ask him to make an arrangement about these illegal votes; that testimony was being taken between Howard and Cooper, and that Cooper must be seen before six o'clock that night; which statement is corroborated by a similar affidavit of said Goodrich.

And the undersigned further states, that he has a deposition from Charles B. Orvis, the person referred to in the testimony of Stowell, Edgar, and Smith, wholly disproving the allegations relative to him, said Orvis, therein made; and that he has depositions also from William Champ and Oliver F. Sage, fully corroborating the statements made by said Orvis.

All these depositions are herewith submitted for the inspection of the committee, and he respectfully asks that they may be received and considered, and made a part of his case. If, however, the committee shall decide that they cannot properly be received and made part of his case, the undersigned submits to the judgment of the committee that they throw such suspicion and discredit upon several of the principal witnesses for the contestant, that he should at least be allowed sufficient time to procure their depositions under all the forms of law, and after giving due notice thereof to the contestant. He therefore prays, that unless the additional testimony now presented be received and considered, such further time may be allowed him before the final hearing in his case, as will enable him to present his evidence fully and fairly to the committee.

GEORGE B. COOPER.

To Hon. JOHN A. GILMER,
Chairman of Committee of Elections.

The returned member of the first district of Michigan presents twenty-six *ex parte* affidavits, taken without notice; the first of them eight months, and the last of them more than eleven months, after the time under the act of Congress had expired. He submits them "*to the inspection of the committee, and asks that they may be received and considered, and made a part of his case.*" "*If, however,* [I quote,] *the committee shall decide that they cannot properly be received and made part of his case,*" *he submits to the judgment of the committee that they throw such suspicion and discredit upon several of the principal witnesses for the contestant, that he should at least be allowed sufficient time to procure their depositions under all the forms of law, and after giving due notice thereof to the contestant.*" *He therefore prays, that unless the additional testimony now presented be received and considered, such further time may be allowed him before the final hearing in his case as will enable him to present his evidence fully and fairly before the committee.*"

With great respect for, and entire submission to, any decision the committee shall make in the premises, I earnestly protest against, and strenuously resist his application in both or either of its forms, in whole and in all its parts. Familiar as are the members of this committee with the history of contested election cases prior to the 19th of February, 1851, they will not only appreciate the reason and necessity of the act of Congress of that date, but they will be slow to depart from its reasonable and wholesome rules of procedure ; nor should the fact that the life of a Congress is only two years, and full half of that time must elapse before a hearing can be had under the most favorable circumstances, make them less prompt and thorough in the disposition of cases as they arise. Strong should be the case that will justify the opening of a case after it has had all the opportunities secured by the law. We see cases now before the committee with a thousand pages of testimony, all taken under the liberal provisions and the ample time secured by the law, what shall be said of an application made almost twelve months after the expiration of the time fixed by the law, and where the party making such application not only never took one word of testimony, but never attempted to take any, or gave any notice of any wish, desire, or intention to take any until more than fourteen months after the notice and grounds of contest, and more than eleven months after the time for taking it under the law had expired. The oldest of these affidavits is dated in November last ; and five of them are dated at Detroit since this case was assigned for hearing on the 27th ultimo, viz : on the 29th of February and the 1st of March, 1860. He asks an adjournment for one week, expecting the arrival of counsel, but improves the time in *fishing up ex parte* affidavits a thousand miles from the place of hearing ; and then on the adjourned day asks that they be received as evidence, or if not, that he have time to put them through such legal forms as will make them receivable. And yet I aver that if you examine the whole twenty-six affidavits, you will not find one alleged fact stated that could not with ordinary diligence have been proved as *well*, as *clearly*, and as *easily* during the "*sixty days*" as now. Nor is there one word of the printed testimony *contradicted*, nor attempted to be *contradicted ;* nor one of the witnesses *impeached*, or attempted to be *impeached* by these affidavits, that could not have been *contradicted* or *impeached* at the time by the very same witnesses. Every one of these affidavits are made by political friends of the returned member, unless we except Orvis from the list. They do not now swear to one fact that was not equally known to them then. Many of them attended the examination of witnesses, and understood the relevancy and necessity of the facts then as well as now. The very attorney of the returned member makes two of these twenty-six affidavits, both dated in December, 1859. Was ever such a case as this presented to any court or committee before ? There is no *surprise* by what the contestant proved ! It was all in his notice served months before. No misfortune or calamity prevented the sitting member from proving his own case or demolishing that of the contestant. All the testimony taken was published broadcast each day. At least three daily papers published full and accurate reports of the whole of it.

The sitting member staid in Washington all or nearly all the time after his answer was served until the testimony was finished, engaged, as was said, in the pleasing pastime of cutting off the heads of such democratic postmasters as had with too *much* or too *little* zeal sustained the *Lecompton policy of the Administration*, while the friends of all new applicants diligently guarded the interests of the sitting member, their friends supposed to be all powerful "*at court.*" I do not complain of this; far from it; it does not concern me. But I submit that the case presents neither *surprise* nor *hardship*. If it shows greater *laches* than was ever before known, it was not my fault. Nor should its repetition in future cases be encouraged by the exercise of unheard-of indulgence.

The House has always exercised this power with caution, and, since the act of 1851, with moderation and apparent reluctance. I know of no case since the passage of that law, when the time has been extended, unless for some reason better than and different from the negligence of the party making the application.

It will not be contended that these affidavits are admissible in evidence unless by consent. And I respectfully, but firmly, refuse my assent to any such proceeding.

As to the question of extending the time, either to take new testimony or to legalize that now offered, I beg leave to cite the following precedents:

Jackson *vs.* Wayne, C. E. C., 49; Moore *vs.* Lewis, ib., 130; Turner *vs.* Baylies, ib., 235, 238; Talliaferro *vs.* Hungerford, ib., 248, 249; Easton *vs.* Scott, ib., 281; Mallory *vs.* Merrill, ib., 347, 348; Brockenborough *vs.* Cabell 1845 and 1846, Cong. Globe, 238. Still stronger is the case of Newland *vs.* Graham, in 1835 and 1836, House reports, vol. 2, No. 378, pp. 2, 14, 17, 18, and 19.

The Hon. Lynn Boyd, of Kentucky, in making the report of the majority to the committee, used the following language: "The committee, after hearing the arguments of the sitting member and the petitioner, rejected this application. They could find no precedent in which an application of a similar kind, even if made at an earlier period, had been granted; but several, in which, notwithstanding the existence of more favorable circumstances, such applications had been rejected both by committees of election and the House, without very strong reasons to show the necessity of further proof, (which the committee did not see in this case;) they considered that the right of contesting a seat in Congress *would be useless and nugatory*, if such postponement and protracted appointments for taking additional evidence after the meeting of Congress should be allowed when the parties had already had the same time to take their depositions, and, as appeared to the committee, a sufficient time."

This, too, was before the law had made that certain which before was, necessarily, to some extent, discretionary; I refer to the well-known case of Vallandigham *vs.* Campbell, House Reports, vol. 1, No. 50, and the vote of the House on the same.

A few words as to the contents of these affidavits: If they were all admitted in evidence they could scarcely affect the case upon its merits. Seven of these affiants swear they boarded with Howrigan

ten days, and voted in the second ward; they *all* swear they were and are voters in the city of Detroit, but not one of them swears he ever was, or ever expects to be, a voter in the second ward, except by virtue of their staying there the ten days. But the proof is clear that they went there to *vote*, not to *reside*. Six of them are named in the printed testimony, and they confirm it. Their names are M. Coughlin, John Martin, James McCann, Thomas McCarthy, Thomas Burns, and William Miller. David Eastman swears he boarded there ten days and voted; but as the testimony was silent with regard to him, the only effect of his affidavit would be to increase the list one. Thomas McCarthy says he is a constable of one of the wards in the city; he is very careful not to tell which ward, but, as I desire to make a clean breast of it, I say he is a constable in the first ward, and was at the time he voted in the second ward. Stephen Martin swears to two things, that he is a justice of the peace, and that James Martin is his nephew. As neither of these points are mooted in the testimony the case will not suffer if we dismiss Stephen, especially as his time as justice of the peace has already expired. Mr. Abram Smolk swears that Jack Smolk was his son, and was twenty-one years old at the time of the election, and that he is now dead; he says his son lived in the city, but does not tell us what ward he lived in; he might, with great propriety, have told us that his son lived in the 6th ward. Thomas Howrigan, who was examined and cross-examined in March last, makes an *ex parte* affidavit in December, in which he says that the two Davis boys were sons of C. F. Davis; that Jack Smolk was the son of Abram Smolk; and that James Martin was the nephew of Stephen Martin. And further he says not.

Mr. Throop makes an affidavit that he is the county clerk; and that he was chosen at the same election by sixty-eight majority, and his seat has not been contested; and further says not. And what of it? Mr. Chipman, late city attorney, a counsel for the sitting member, swears that Mr. Throop *is* county clerk; and as the same thing is proved in the printed testimony, page 51, I think it ought to be considered as established.

A. W. Sprague, Benjamin Sporling, Julius S. Blodget, John Croman, and John Fuller, each swear they knew the character of Edgar for truth and veracity was bad. As they knew it at the time, and have made no discoveries since, the question is quite pertinent—Why did they not swear to this reputation at the time? They could then have been cross-examined; parties could have met face to face. Why attempt so ungracious a task twelve months afterwards, and then *ex parte?* But if they could successfully impeach Mr. Edgar, which I do not believe, they would only affect nine votes. I do not think the case will turn on this.

Mr. C. F. Davis swears that Frank, George, and Bunty, are his sons. As there is no testimony about George and Frank, or either of them, I fail to see the relevancy of his testimony, as he affirms nothing in regard to them except that they are his sons. He thinks Bunty was out of the city at the time of the election; I think he was at Tom Howrigan's, "drunk as a lord." Mr. Davis might with truth,

and if he had been cross-examined, probably would have said that he and his boys lived in the 4th ward of the city of Detroit.

Mr. Chipman, the counsel of the sitting member, makes the second affidavit, also dated in December, in which he gives the names of ten of Howrigan's boarders and says he knows them, and thinks they are voters in the city. He is very careful not to say they are or ever were voters in the second ward. If this information be important, it was no less so when the testimony was taken than now. His information was as full then as in December last. Seven of the list are the same who have furnished their own affidavits, as already stated, but who observe the same ominous silence as to residence in the second ward.

Mr. C. F. Walker is a very worthy citizen. He thinks, on the whole, that the election in the second ward was tolerably quiet. He was the democratic candidate for State senator. As the ward usually gives twenty-five or thirty republican majority, it must have seemed rather comfortable to have it give seventy or eighty the other way, although by colonization, fraud, and by what seemed a very little violence. Mr. Elwood swears that Mr. Stowell applied to him, he being a member of the State central committee, to get a place in the district custom-house, in January, 1859, and offered, if he got it, to prove that some illegal votes were cast for contestant. He showed him a list, and he thinks they are the same names that Mr. Edgar swore to as having voted for sitting member. As Mr. Stowell does not swear to any important fact, I do not appreciate the importance of what he said to Mr. Elwood. As Stowell's list was seventeen, and Edgar's only nine, the *exact identity* might be difficult to prove even if important.

Mr. John Clements swears that he attended the election in Leoni, Jackson county; that one of the magistrates did not appear at the opening of the polls, and a Mr. Gardner was chosen inspector. He says he accepted, but was not sworn, and did not act. The other inspectors did it all until within half an hour, when the missing magistrate appeared, and acted through the day as inspector. He also says an assistant clerk was appointed who aided the town clerk, but he d d not see him sworn. As there is nothing about this in the answer to notice of contest, I expect it would hardly be competent to prove this if the time were extended.

Mr. Champ swears that he went to Cleveland and got Mr. Orvis's affidavit. Mr. Sage swears he knows Mr. Orvis, and he was in his office on election day, and he would believe him under oath.

And now come Mr. Weller and Mr. Goodrich, who it seems came to Detroit as strangers, to do some paving; and Mr. Edgar showed them a list of seventeen names which he said were worth $300; at least Stowell would get that for them. He asked if they knew Cooper; that he "must be seen before six o'clock." Now, if all this were proved in legal form it might show that Edgar thought the sitting member *green* enough and *wicked* enough to squander some of his money for an illegal and wicked purpose; in which, I am happy to know, he was mistaken. And although "it was money he wanted," "and not friends," he did afterwards go quietly before the recorder, in obedience to legal process, and swear to a list of nine illegal votes

cast for the sitting member, for the moderate fee of seventy-five cents, or perchance one dollar, advanced by me and paid by our worthy democratic recorder, in every respect according to law ; which sum of money I shall lose unless reimbursed by the United States.

In this hastily prepared abstract, I believe I have given the full scope and substance and true meaning of all these twenty-six affidavits. All that relates to the Howrigan voters is confirmatory of the regular testimony ; all that relates to conversations, and promises made to get an office, is irrelevant, unimportant, and worthless ; all that looks to impeachment of parties in an *ex parte* way is irregular, unjust, and cruel. The degree of consanguinity and official position, so elaborately established as in the cases of Davis and Smolk, Martin and Throop, may be more interesting to the future historian than to the present Committee on Elections.

Thus, whether we consider the question as one of *general policy*, of *fairness as between parties*, or of necessity, for the purpose of securing justice in this particular case, this application should be refused in both its forms. The authorities, as already seen, are very uniform ; the exceptions are rare, and, I believe, always based on some favorable circumstances in the particular case. In the case of Vallandigham *vs.* Campbell extraordinary circumstances were given, showing many reasons why the sitting member should have indulgence; and yet the application was overruled. This case shows nothing to palliate or excuse the negligence that has been made the only foundation for delay. It is not even shown or pretended that new facts have been discovered. Every fact stated in the affidavits was known to the sitting member or his agents at the time of taking the regular testimony. It has been repeatedly held that the fact that one party had given notice and was engaged in taking testimony does not at all excuse the other party, as the law contemplates that either or both parties may attend by their agents, and not necessarily in person. It was so held in Vallandigham *vs.* Campbell.

As all excuse, all necessity are wanting ; as principle and precedent are against it, I ask that the application be rejected.

WILLIAM A. HOWARD.

WASHINGTON, D. C., *March* 6, 1860.

WASHINGTON, *March* 8, 1860.

GENTLEMEN: In my reply to the application of the sitting member for further time to take testimony, I confined myself to his application and the contents of the affidavits which he offered. I had the day before submitted some remarks, verbally, before the committee, and I should have stated the points in them in my written communication. I stated that the first meeting to take testimony was on the 4th of March, the notice having been served on the 21st of February. (See 8th page of printed testimony at the bottom.) This was adjourned to the 11th by consent. On the eleventh, objection was made because Mr. Throop's name was not in the notice, by whom we wished to prove the official returns *only*. Then a new notice was given for the 21st,

and all the testimony was taken from the 21st to the 26th, both inclusive. Mr. Edgar's name was in the notice of the 16th, and he could have been impeached on the 26th. They knew he was to be examined as early as the 16th, on that day in time to give their notices and have their witnesses there. The ability to impeach did not depend upon what he swore to, but upon his reputation for *truth* and *veracity*. They do not now propose to contradict directly his statements, but to impeach his character. The fact that one party is engaged in taking testimony, does not excuse the other from taking his at the same time, since both are expressly allowed to appear by agents in the act of Congress. (See Vallandigham *vs.* Campbell.) Mr. Edgar is a democrat, and was a most reluctant witness. He was believed and admitted to be *entirely truthful* by the counsel for sitting member, and by everybody else. Nor was there any other opinion entertained until every effort of the agents of sitting member had failed to corrupt him. These same men who swore on the 29th of February and the 1st of March they would not believe him under oath, were as late as the 1st of January, 1860, trying to tamper with him, and, as was said, were in the employment of the sitting member. And, now, after every effort has failed, and after the case comes up for hearing, and is adjourned for one week, at the instance of sitting member, these agents of the returned member earn their wages by swearing they would not believe him under oath. I am ready to verify this statement upon oath, if the committee desire it, and deem this additional answer receivable at this time.

WM. A. HOWARD.

The COMMITTEE ON ELECTIONS.

WASHINGTON, *March* 13, 1860.

In reply to the statement of the sitting member, made in support of his application, and in reply to the additional affidavits which he has this day presented, I would say the verbal statement that "he was informed in May, 1859, by his attorney, that contestant had failed to make out a case sufficient to deprive him of his seat, and that he did not read the testimony until October," eight months after the testimony was closed, clearly proves that his application rests on his on *laches*.

As to the affidavit of C. B. Chovin, that he put up the notices for holding the election for "Grosse Point" at Wilson's, it is altogether immaterial, since the place had been fixed at Klines by the vote of the town, and if he gave notice at any other place, the notice was a nullity. Connor's affidavit is equally immaterial, as the *place* was fixed by vote of the town, the supervisor had no power to change it. If these affidavits were in evidence, they could not in any way affect the case. As all the affidavits are irrelevant and immaterial to the issue, and as the application has no better foundation than his *laches*, I insist it should be rejected. I submit there is not a case on record where such an application has been granted after the lapse of o mu ch time, and the party making the application had never made

the slightest effort to take any testimony whatever, while the *laches* are complete, cover the whole time, and are without excuse. To grant it under such circumstances, unless by consent of parties, is tantamount to a denial of the right to contest a seat in the House at all.

WILLIAM A. HOWARD.

Hon. JOHN A. GILMER,
Chairman Committee of Elections.

WASHINGTON, *March* 10, 1860.

SIR: I am in receipt of your favor announcing the decision of the Committee of Elections against the extension of the time asked for by me to produce testimony in reply to that offered by Mr. Howard, who is contesting my seat as a member of the present House of Representatives. It is with extreme regret I feel it a duty I owe to my constituents to appeal from that decision to the House itself. Had I been guilty of any *laches* or neglect, I would not have asked the time at your hands, but no such neglect has occurred on my part. The notice I received from Mr. Howard, that he intended to contest my seat, was received on the 28th of December, 1858. My answer and denial of all the grounds alleged was served upon Mr. Howard on the 26th of January, 1859. According to the law of Congress, the parties had sixty days, and no more, to produce their witnesses and procure such proof as they should deem requisite and necessary to fairly and truthfully present the facts to the House of Representatives, the judge to decide this case. The law requires that at least *ten* days' notice shall be given to the opposite party of the time and place of examining witnesses, as well as their names; without this, no process is provided for compelling the attendance of witnesses. The first witnesses subpœnaed by Mr. Howard were required to appear on the 21st of March, 1859, within six days of the expiration of the sixty days, and the examination commenced on that day, and he occupied all the time left of the sixty days allowed by law. It was impossible for me to determine what witnesses I should require until I first knew the points he intended to introduce testimony upon, and the time had already elapsed within which I could give notice of the taking any testimony before Mr. Howard produced a single witness. Without the special authority of the House of Representatives, which was not in session, I could not compel the attendance of a witness. To have proceeded at at that time, would have been *ex parte*, and of no avail, and the evidence taken without the formalities of law. Had there been a single day or hour, after the commencement of Mr. Howard to examine witnesses, within which I could have enforced the attendance of witnesses on my part, then I should not have complained; but as I have been deprived of this right by the act of the contestant himself, I deem it no more than just to the people of the district I represent to appeal from the decision of the committee, and respectfully ask for time to produce witnesses on my part. If this time is granted, I shall be able to prove conclusively to the com-

mittee and the House, that there is not any ground for Mr. Howard to contest my seat; and I request the committee to refer this appeal to the House, with all the affidavits presented in my behalf, so that the House will be able to fully understand the same.

Yours, respectfully,

GEORGE B. COOPER.

Hon. JOHN A. GILMER,
Chairman Committee of Elections.

Affidavits of Orvis and Sage, contradicting the material facts sworn to by Edgar.

STATE OF MICHIGAN, *County of Wayne, ss:*

Oliver F. Sage, of the city of Detroit, being duly sworn, says that he is twenty-one years old and upward, and that he knows Charles B. Orvis, and knew him on the day of the general election for governor, members of Congress, and ward officers, held in the city of Detroit in November, A. D. 1858, and that the said Orvis was at his office in said city of Detroit a portion of that day; and this deponent thinks said Orvis voted at the polls of the fifth ward, in the forenoon of said day; and so far as deponent knows, that during that time, he the said Orvis took no part in said election, except to vote; and this deponent is acquainted with said Orvis, and would believe him under oath.

And further deponent saith not.

OLIVER F. SAGE.

Sworn and subscribed before me this first day of December, A. D. 1859.

WILLIAM CHAMPE,
Notary Public, Wayne county, Michigan.

Affidavit of Richard H. Conner.

STATE OF MICHIGAN, *County of Wayne, ss:*

Richard H. Conner, of the township of Grosse Point, being duly sworn, deposes and saith that he is twenty-one years of age and upwards; that he is a resident of the township of Grosse Point, Wayne county, and State of Michigan. Further, that he was one of the inspectors of the general election held in the township of Grosse Point, county and State aforesaid, which said general election was held on the first Tuesday (second day) of November, A. D. 1858; that at said general election there was, among other offices, one member of Congress elected; that said election was held at the house of Charles Wilson, in said township of Grosse Point, on the Detroit and St. Clair Plank Road, by order of Charles B. Chauvin, township clerk of

said township, and with the consent of this deponent and the other members of the township board of said township. Further, that at the township meeting held in said township the previous spring there was no place designated for holding the general election to be held on November 2d, A. D. 1858; that by this deponent's consent with the other members of the township board of said township of Grosse Point there were three notices posted up in said township, giving notice of a general election, of the time and place; and that said general election was held at the time and place so designated by said notices; that said notices were posted up more than ten days previous to said general election.

And further this deponent saith not.

RICHARD H. CONNER.

Grosse Point, March 3d, 1860.

Sworn and subscribed before me this third day of March, A. D. 1860.

JULIUS S. BLODGET,
Notary Public in and for Wayne county, Michigan.

Affidavit of Thomas B. Hughes.

STATE OF MICHIGAN, *Wayne county, ss:*

Thomas B. Hughes, being first duly sworn, says that he was born in the province of Canada, and is now thirty-five years old, and took out his naturalization papers in 1851, and came to the United States when eight years old, and has resided in the United States ever since; has voted for the last five years in the city of Detriot, and voted the first Tuesday after the first Monday in November, A. D. 1858, in the fifth ward in the city of Detriot, for congressional, State, county, and city officers, and is now a registered voter of said city.

T. B. HUGHES.

Sworn and subscribed to before me this 2d day of March, 1860.

A. W. SPRAGAN,
Notary of Public, Wayne county, Michigan,

Affidavit of S. D. Elwood.

STATE OF MICHIGAN, *County of Wayne, ss:*

S. D. Elwood, being first duly sworn, deposes and says, that he lives in the city of Detroit, in said county; that he knows Alexander H. Stowell, who resides in the fifth ward of the said city, and was, in November, 1858, a candidate on the democratic ticket in said ward; that during the first part of the month of January, A. D. 1859, said Stowell came to this deponent and stated that he wanted a place at the Detroit custom-house, at a dollar a day, and wished the influence of this deponent (who is a member of the democratic State central committee of said State) to help him get said place; that if successful in getting said place, he was able to show, and would show, that a large number of illegal votes were cast for William A. Howard fo Congress in the fifth ward aforesaid on the first Tuesday after th

first Monday in November, A. D. 1858; that he would do the same in regard to other portions of the congressional district. At the same time he exhibited to this deponent a list of names of illegal voters in the fifth ward and other places at the election held on that day, all of whom he said had voted for William A. Howard, as he could prove; and this deponent further says that he could not consistently aid said Stowell in getting said place, for the reason that he had no confidence in his political character to recommend him; that during the taking of testimony in the matter of the contest of the right of George B. Cooper, esq., to a seat in the thirty-sixth Congress, as a member from the first district of the State of Michigan, by William A. Howard, before the recorder of said city, this deponent was present a great portion of the time and heard the testimony in part given in relation to said fifth ward, and that he has since read the testimony then given; that the names of illegal voters sworn to by David A. Smith and Andrew R. Edgar as voting for Mr. Cooper and the democratic ticket, (except Mr. Walker, for State senator,) in the fifth ward, are the same names which Mr. Stowell exhibited to this deponent, as aforesaid, and which he then proposed to prove voted illegally for Mr. Howard; that the recollection of this deponent is quite distinct upon the point; and further this deponent saith not.

S. D. ELWOOD.

Sworn and subscribed before me this 6th day of December, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

Affidavit of William Champ.

STATE OF MICHIGAN, *County of Wayne, ss:*

William Champ, of the city of Detroit, and State of Michigan, being duly sworn, says that some time in June or July that he requested one H. S. Inman, of this city, to call on Charles B. Orvis at the city of Cleveland, Ohio, and get from him a statement of facts concerning his (Orvis's) connexion with the election frauds in the fifth ward of Detroit, at the election of November, A. D. 1859, and that said Orvis sent back to me a written statement embodying the facts stated in his (Orvis's) affidavit; and that on the 27th day of November, A. D. 1859, this deponent went to the city of Cleveland, Ohio, and had an interview with the said Charles B. Orvis, who admitted to this deponent that he had given to said Inman said written statement at the time above stated, and this deponent then fully and freely stated to said Orvis the subject of his visit, detailing to him the evidence given by A. H. Stowell, David A. Smith, and Andrew K. Edgar, in relation to his complicity in the said election frauds, and after being by me duly cautioned to tell nothing but the truth, freely and voluntarily made the annexed affidavit; and deponent further says that no inducements, fee, or reward was held out to said Orvis for the purpose of getting him to make said affidavit, and that deponent is well acquainted with said Orvis, and believes he is a man of truth

and veracity, and that he would not knowingly swear to what was not true.

WILLIAM CHAMP.

[L. S.] Sworn and subscribed to before me this first day of December, A. D. 1859.

E. T. THROOP,
County Clerk, Wayne County, Michigan.

Affidavits as to character of Edgar.

STATE OF MICHIGAN, *County of Wayne, ss:*

Stepten P. Purdy, being duly sworn, says he is thirty-four years of age; that he has resided in the city of Detroit for fifteen years; that he has been a justice of the peace in said city of Detroit for four years last past; that he knows Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859, and has known his reputation for truth and veracity in the neighborhood where he has resided for the last three years; and that said Edgar's reputation was bad, and that from the knowledge of his said general character this deponent would not believe said Edgar under oath. And further this deponent saith not.

S. P. PURDY.

Subscribed and sworn to before me this first day of March, A. D. 1860.

WM. CHAMP,
Notary Public Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

Julius S. Blodget, being duly sworn, says that he is twenty-one years of age and upwards, and that he has resided in the city of Detroit, in said county, during the past four years, and during that time has been a deputy sheriff of said county; and that he knows Andrew K. Edgar, and has known said Edgar for about three years; and that he knew said Edgar on the 26th day of March, A. D. 1859; and that he is well acquainted with said Andrew K. Edgar's character for truth and veracity in the neighborhood where he resides, and that said Edgar's character for truth and veracity was on said above-mentioned date bad; and from said general bad character for truth and veracity, this deponent would not believe him under oath. And further, that soon after the above mentioned date, said Edgar was arrested on a charge of larceny, and that said charge is still pending against him; and this deponent further says, that said Andrew K. Edgar has been a resident of this city and its vicinity during the past three years; and further the deponent saith not.

JULIUS S. BLODGET.

Sworn and subscribed to before me this first day of March, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne:*

Ara W. Sprague, being sworn, says that he is twenty-one years old and upwards, and resides in the city of Detroit, and has resided in said city for ten years last past; and for the past six years he has been a constable of the second ward in said city of Detroit; and that he knows one Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859; and this deponent knows the reputation of said Edgar in the neighborhood in which he resides for truth and veracity, and that said Edgar's reputation for truth and veracity is bad, and was bad at the above date; and from the general bad character of said Edgar in this city and its vicinity, this deponent would not believe said Edgar under oath; and this deponent has known said Edgar as a resident of this city and its vicinity for three or four years last past. And further saith not.

A. W. SPRAGUE.

Sworn and subscribed before me this 1st day of March, A. D. 1860.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

Benjamin Sparling, being duly sworn, says that he is twenty-one years old and upwards, and that he has been a resident of the fifth ward of the city of Detroit for the last ten years, and that during the most of that time his business has been that of a constable of said ward; and that he knows one Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859; and that he knew said Edgar's character for truth and veracity at that date, and that his character for truth and veracity is bad in the neighborhood where he resides; and from said general bad character, said Edgar is not worthy of belief on oath, and this deponent would not, for that reason, believe him under oath. And further deponent saith not.

BENJAMIN SPARLING.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

John Cronan, being sworn, says he is twenty-one years old and upwards, and is a resident of the city of Detroit, and has resided in said city for the last twelve years, and for the last two years has been on the police of the city of Detroit; and he knows one Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859, and

knew his character for truth and veracity in the neighborhood where said Edgar resided at that date, and his character for truth and veracity was bad at that date; and from said general bad character of said Edgar, this deponent would not believe him under oath; this deponent arrives at this conclusion from what he has heard people in this vicinity say of and about said Edgar; and that this deponent has heard of said Edgar more or less as a resident of the city of Detroit for the past two years. And further saith not.

JOHN CRONAN.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

John Fuller, being duly sworn, says that he is twenty-one years old and upwards, and that he is a resident of the 5th ward in the city of Detroit, and has been a resident of said county for the past twenty years, and has been in the city of Detroit for the last eighteen months past; and that since the 1st of January, A. D. 1859, his business has been that of a deputy sheriff of said county, and is now deputy United States marshal for the district of Michigan; that this deponent *does not* know Andrew K. Edgar personally, but this deponent has frequently heard said Edgar's character for truth and veracity spoken of by citizens of the city of Detroit and its vicinity, and remembers the time when said Edgar gave his evidence in the contested election case on the 26th day of March, A. D. 1859; and from what this deponent has heard people say of the character of said Edgar for truth and veracity in the vicinity where he has resided, it is bad, and this deponent would not believe him under oath; but this deponent knows nothing against said Edgar as to truth and veracity of his own personal knowledge. And further saith not.

JOHN FULLER.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss.*

Daniel S. T. Weller, being first duly sworn, makes oath and saith that he lives in the city of Detroit, and is a member of the firm of Weller, Goodrich & Co., paving contractors in said city and county; that in the spring of 1859 one Andrew K. Edgar met this deponent, who had recently come from Jackson, where the honorable George B. Cooper resided, and asked the deponent whether he knew George B. Cooper, the member of Congress elect from the first district of the State of Michigan, to which this deponent replied, "I have seen him,"

or knew him by sight. Before he said this he asked this deponent if he had seen Stowell; that he had a list of names upon a piece of paper which were worth three hundred dollars; that Stowell could make that out of them, and he intended to make the same. My impression is that he said there were seventeen of these names. He showed me a slip of paper which he said the names were on. Some of them he said were names from the country, some from the city. He said these men had all voted illegally for William A. Howard for Congress at the election held the preceding fall. He said he was after money now, not friends, and that if he kept the papers himself he could make three hundred dollars; that Stowell was trying to get them away from him. He then asked my partner, Mr. Goodrich, who was present, to see Mr. Cooper, to ask him to make an arrangement about those illegal votes. He further said that testimony was being taken between Howard and Cooper, and that Cooper must be seen before six o'clock that night; that he understood Cooper was in town.

This deponent is not certain as to the time this conversation occurred, but thinks it was at the time testimony was being taken before Recorder Morrow.

DANIEL S. T. WELLER.

Sworn to and subscribed before me this 6th day of December, 1859.

WILLIAM JENNISON, Jr.,
Notary Public, Wayne County, Michigan.

State of Michigan, *County of Wayne, ss:*

Judson C. Goodrich, being first duly sworn, deposeth and saith that he has read the foregoing affidavit signed by Daniel S. T. Weller, and that he is the Goodrich mentioned in said affidavit, and that the contents of the same are true; that he has known Edgar ten or twelve years; that in the conversation between Weller, Edgar, and this deponentt, the said Edgar said everything which said Weller swears to; that a great portion of his conversation was directed to this deponent; that he said the names on said list which he had were from the country and the fifth ward in the city; that he had been rich once, and was poor now, and that he wanted money, not friends. He said that every one of the names on the list were worth seventy-five dollars a man, and that the man who would give the most for them could have them, and wanted this deponent to make an arrangement with Cooper for them; for that the man who paid the most for them could have them. I am certain that he said that he would swear for Mr. Cooper that these persons voted for Howard; that he knew they were put in for Howard. He said that they were taking testimony at that time between Cooper and Howard. He seemed to be afraid that Stowell would use the names first, and wanted me to see Cooper as soon as possible.

J. C. GOODRICH.

Subscribed and sworn to before me this 6th day of December, A. D. 1859.

WM. JEINNSON, Jr.,
Notary Public, Wayne County, Michigan.

Affidavits of Hon. C. J. Walker and J. L. Chipman, showing there was no violence at the polls of the second ward.

STATE OF MICHIGAN, *County of Wayne:*

I, Charles J. Walker, of Detroit, being duly sworn, depose and say that I am, by profession, an attorney and counsellor-at-law, and am a law professor in the University of Michigan. I reside in the second ward of the city of Detroit, and have for many years; at the State election in November, 1858, I was a candidate for State senator, and spent the entire day at the polls, and mostly at the second ward. I was for a short time at the fifth and sixth wards. While at the second ward polls, which was for most of the day, I was an interested and careful observer of the manner in which the election was conducted. I especially noticed the conduct of Thomas Howrigan, who acted as a democratic challenger; I can say with great confidence that I never saw a warmly contested election in the ward conducted more civilly. There were no threats nor violence that could or did deter any voter from depositing his vote. The votes were received at a window in the City Hall, which was too high to be reached from the ground, and a dry-goods box was placed in front of the window upon which voters got when they voted. At an early hour in the morning, the republican challenger, Sylvester Larned, esq., took his position on the inside of the room where the votes were received at the window, and so placed himself that no democratic challenger could find or get a position there, and consequently they had to be outside. There was no other place they could occupy than the dry-goods box; here, for the most part, Mr. Howrigan was stationed. The box was quite too small for a convenient platform, and towards the close of the day there was some crowding upon it, and naturally and inevitably some pushing, but there was much less than I have usually seen, and no violence and no difficulty in voting. I do not believe that any voter lost his vote either from violence or fear of violence, or from any real difficulty in getting to the polls. There was of course some rudeness of speech and some struggles to get uncertain voters to change their votes, but less than is usual at elections. Special pains had been taken to impress upon democratic challengers that quiet and order must be preserved, and it was done to a remarkable degree. Sylvester Larned, the reupblican challenger, expressed himself very strongly at the close of the polls in relation to the peaceable character of the election, and especially as to the peaceable manner in which Howrigan had conducted himself.

C. J. WALKER.

Sworn and subscribed to before me this 8th day of December, 1859.

HENRY R. MIZNER,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

J. Logan Chipman, being first duly sworn, deposes and says that he is a lawyer by profession, and counsel for George B. Cooper,

member of Congress from the first district of the State of Michigan; that he was born and reared in the city of Detroit; that he knows and has known from his earliest boyhood, Matthew Coughlin, Henry Hale, George Davis, Frank Davis, Corey Scanlon, Dominic Gallagher, John Hancock, John H. Smolk, (called Jack Smolk,) Bunty Davis, and Charles Dezalia, as residents of the city of Detroit, and American citizens; that he has also known for many years in said city, James Martin and Harvey Van Meter, both residents, as their parents have been, of said city; that all these persons he has named have grown from boyhood in said city, (except John Hancock, who is an elderly man,) and that the familes of most of them, to the certain knowledge of this deponent, are old residents and citizens of said city; that Dezalia's real name is Jubenville; that he takes the name of Dezalia from the fact that his mother's first husband bore that name, and his half brothers all bear it; that all the persons above named stopped at the house of Thomas Howrigan, in the second ward, immediately before the first Tuesday after the first Monday in November, A. D. 1858; that they were there several days before that time; that Thomas Burns was also there, whom this deponent has known as a resident of said city during several years; also Thomas McCartley, who has lived in said city, to the knowledge of this deponent, over ten years, who has, as this deponent knows, been turnkey at the jail, constable, deputy sheriff, and special policeman, in said city, and was elected constable of said city again during the fall of 1859, and whom this deponent has long known as an actual voter in said city.

And this deponent further says that he was at the polls of the second ward, in said city, frequently, during the election for congressional and other officers, held on the first Tuesday after the first Monday in November, A. D. 1858; that he saw no violence or disorderly conduct at said polls; that he was at said polls during the last hour or two before they closed, and that, though there was a great deal of laughter and joking, he neither saw nor heard any violence or attempt to prevent republicans from voting; that he saw Thomas M. Howrigan at said polls several times during the day, and that his conduct was peaceable and decent, and that the same is true of James Martin; that Howrigan seemed to be endeavoring to keep things quiet. This deponent knows David Crosby, who has the reputation of being a quarrelsome and litigatious man; that from a suit before the police court, after the election, the deponent learned that Crosby had had a difficulty at the polls with a man named Dutch Nick; that the deponent heard Crosby's testimony upon said suit; that the difficulty was of a personal nature, and that the same parties had had difficulties before; that this deponent's recollection is that Sylvester Larned, esq., was Crosby's counsel; that said Larned, as a witness for Mr. Howard, in the contest of the seat of Mr. Cooper, in Congress, declined to answer whether said difficulty was of a personal nature. And this deponent further swears that said Larned, after said election, informed him that Howrigan's conduct at said polls was peaceable and decent; that he said this in a conversation about an article in the republican paper called the "Tribune," published in said city, which he pronounced untrue, and which accused Howrigan of disorderly con-

duct at the polls, and told this deponent that he should speak to Mr. Fralich about the untruth of the article, in order to aid Howrigan in obtaining an appointment under Fralich, who was then the democratic sheriff elect of Wayne county.

And this deponent further swears that he is informed and believes that said David Crosby was not on said Tuesday a resident of the second ward, but lived and actually voted in the first ward of said city.

J. LOGAN CHIPMAN.

Sworn and subscribed before me this 5th day of December, A. D. 1859.

WM. JENNISON, JR.,
Notary Public Wayne County, Michigan.

Affidavits showing that no place was designated in the spring, in the town of Grosse Point, to hold the election in the fall.

STATE OF MICHIGAN, *County of Wayne, ss:*

Charles B. Chauvin, being duly sworn, deposeth and saith that he is twenty-one years of age and upwards; that he is a resident of the township of Grosse Point, in the county of Wayne and State of Michigan; further, that he is now and was in the year A. D. 1858 township clerk of said township; that he was clerk of the board of inspectors of the general election held in said township of Grosse Point, which said general election was held on the first Tuesday (second day) of November, A. D. 1858; that said general election was held at the house of Charles Wilson, in said township, on the Detroit and St. Clair plank road; that said election was held at said Wilson's by order of this deponent and the mutual consent of the township board of said township of Grosse Point; further, that at the township meeting of said township of Grosse Point held the previous spring there was no place designated for the next general election to be held, to the best of his knowledge and belief; further, that if at said township meeting there was a place so designated, it is and ever has been unknown to this deponent, and there is no record to that effect on the township records kept by this deponent; further, that there was posted three notices of said general election by this deponent; that said notices did designate the place and time of holding said general election, and that said general election was held at the time and place so designated by said notices; that said notices were posted eleven days previous to said general election; and further this deponent saith not.

CHAS. B. CHAUVIN.

GROSSE POINT, *March* 3, 1860.

Sworn to and subscribed before me this 3d day of March, A. D. 1860.

JULIUS S. BLODGET,
Notary Public in and for Wayne County, Michigan.

Affidavit of Charles B. Orvis.

STATE OF OHIO, *County of Cuyahoga, ss:*

Charles B. Orvis, being duly sworn, says that he is twenty-six years old and was born in the State of Michigan, and that he was at the city of Detroit and State of Michigan on the first Tuesday after the first Monday of November, A. D. 1858, that being the day of the general election for governor, members of Congress, and ward officers for said city of Detroit; and that he had resided in said city of Detroit six months next preceding said day of election, and in the fifth ward of said city for ten days next preceding said day of election, and that he did vote at said election at the polls of the fifth ward of the city of Detroit and State of Michigan, and that he voted the republican ticket, as a majority; that the only alterations he made on said republican ticket was the filling in of the name of Alexander H. Stowell, the democratic candidate for alderman for said fifth ward, and one other ward officer, which is all he now recollects of altering on said republican ticket; and that, to the best of his recollection, he made no alteration of names on the State, congressional, or senatorial part of said ticket; but being unacquainted with the candidates named on said republican ticket, deponent is unable to state the names of the candidates he did vote for on said ticket, but that he intended to vote and believes he did vote a republican ticket with the above exceptions. And deponent further says he knows Alexander H. Stowell, and that deponent is the man whom Stowell was bail for immediately preceding said day of election in the year 1858. Deponent also knows David A. Smith; and this deponent says that on the said day of election he went to the polls of said fifth ward and voted as aforesaid, and that he was only at said polls but once on that day, and then only stopped there long enough to deposit his vote, which occupied not to exceed ten minutes; and that he was at the office of O. F. Sage and at his own house the remainder of the day; that he did not on that day solicit any one to vote, or at any time previous thereto solicit any person to vote at said election; and that deponent did not upon that day bring any illegal voters or legal ones to said polls for the purpose of voting, either from Canada or any wards of the city of Detroit, or any other place; and this deponent had no arrangement or understanding, bargain or agreement with any person to procure illegal votes to be polled at the said election, either at the fifth ward polls or any other polls in said city of Detroit, and that he was not asked or solicited by any person to do so; and that he has never, either directly or indirectly, received any money or other valuable thing for so doing. And deponent further says that he does not know and verily believes that he never saw Dudley Wattress, John Smith, H. Sutikee, George Williams, Henry Kelly, John Worden, Joel Smith, Joseph Warren, Thomas Simpson, John Folgen, Thomas Hughes, and John Kalfen; and that he never solicited either of them to vote either the democratic or republican ticket at said November election of 1858. And deponent further says that in politics he is a republican in sentiment and feelings, and believes that he voted for William A. Howard for

Congress and Henry Barnes for State senator at the election aforesaid. And deponent further says that previous to said day of election he was very much out of health, and that on said day of election it was a wet, rainy day, and the weather was so inclement that it was impossible for deponent to be in or at said polls. And further deponent saith not.

CHARLES B. ORVIS.

Sworn and subscribed before me this 29th day of November, A. D. 1859.

[L. S.] GEORGE BINGHAM,
Deputy Clerk of Court of Common Pleas of Cuyahoga County, Ohio.

Affidavits showing that certain of the persons voting were legal voters.

STATE OF MICHIGAN, *County of Wayne, ss:*

Abraham Smolk, being first duly sworn, deposes and says that he is the father of John H. Smolk, who is now deceased; that said John was born in Auburn, in the State of New York, but was brought up from early childhood and has resided in the city of Detroit, in said county, and was a single (unmarried) man; that said John was, on the first Tuesday after the first Monday in November, A. D. 1858, over twenty-one years of age.

A. SMOLK.

Sworn and subscribed before me this 25th day of November, A. D. 1859.

MINUS T. LANE,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

Matthew Coughlan, being first duly sworn, deposes and says that he is an unmarried man, twenty-three years of age, and was born in the city of Brooklyn, in the State of New York, and resided in the city of Detroit, in said county, nearly twenty years; that he stayed at the house of Thomas Howrigan on the first Tuesday after the first Monday in November, A. D. 1859, in the 2d ward of said city, and voted at the polls of that ward on that day, at the congressional, State, county, and city election; that he voted this fall in said city, and is a registered voter.

his
M. ⋈ COUGHLAN.
mark.

Sworn and subscribed before me this 25th day of November, A. D. 1859.

STEPHEN F. PURDY,
Justice of the Peace, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

Thomas Howrigan, being first duly sworn, deposes and says that he is the same Howrigan who testified in favor of Wm. A. Howard, before Henry A. Morrow, esq., recorder of the city of Detroit, in said county, in the matter of the contest by said Howard of the right of Geo. B. Cooper, esq., to a seat in the 36th Congress, as member from the 1st congressional district of the State of Michigan; that the two Davis boys, sworn to in his testimony in said matter, are the sons of Caleb F. Davis, formerly a city officer of said city; that John H. Smolk is the son of Abraham Smolk, and James Martin the nephew of Stephen Martin, esq.; that he knows David Crosby, and that he had a difficulty on the day of election at the second ward polls—the election at which Mr. Cooper was elected—with a man named Dutch Nick; that the difficulty was not political but personal.

THOS. M. HOWRIGAN.

Sworn and subscribed before me this 5th day of December, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

Daniel Eastman, of the city of Detroit, in said county, being first duly sworn, makes oath and saith that he is twenty-nine years of age, was born in Seneca county, in the State of New York, has lived in the city of Detroit about eight years, has voted in said city for the last six years, and has lived in the State of Michigan twenty-three years; that he resided in the second ward, at the house of Thomas Howrigan, two weeks before the first Tuesday after the first Monday in November, A. D. 1858, and voted at the polls of the second ward in said city, on that day, at the election held that day for congressional, State, county, and city officers. Voted this fall in said city, and am a registered voter in said city.

DANIEL EASTMAN.

Sworn and subscribed before me this 26th day of November, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

John Martin, of the city of Detroit, being first duly sworn, says that he is nearly twenty-three years of age, and was past twenty-one years of age on the first Tuesday after the first Monday in November, A. D. 1858; was born in Ireland; came to America with his parents about twelve years ago, and has lived in Detroit over eight years; his father is a naturalized citizen, and so is this deponent himself; that

he lived in the second ward of said city, at the house of Thomas Howrigan, ten days next preceding said first Tuesday, and voted in said ward at the election for congressional, State, county, and city officers held that day.

JOHN MARTIN.

Sworn and subscribed before me this 28th day of November, A. D. 1859.

A. W. SPRAGUE,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

Thomas McCartley, being first duly sworn, says that he is a registered voter and constable in the city of Detroit, and a single man, thirty-eight years of age; has resided in said city, in said county, twenty-three years; was a resident of the second ward in said city on the first Tuesday after the first Monday in November, A. D. 1859; lived at the house of Thomas Howrigan, in said ward, ten days next preceding said day, and voted on that day at the second ward polls for congressional, State, county, and city officers.

THOMAS McCARTLEY.

Sworn and subscribed before me this 26th day of November, A. D. 1859.

MINUS T. LANE,
Justice of the Peace, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

William Willson, being first duly sworn, deposes and says that he is a native of the United States of North America, born at Erie, in the State of Pennsylvania; that he now resides, and has since he was an infant resided, in the city of Detroit, in the State of Michigan; that he is an unmarried man, twenty-three years of age, and resided in the second ward in said city, at the house of Thomas Howrigan, a period of more than ten days next preceding the —— day of November, A. D. 1858, and voted at the second ward polls at the election for member of Congress, State, county, and city officers, held in said ward upon that day; and that he voted and swore in his vote at said election under the name of "William Willson."

WM. WILSON.

Sworn and subscribed before me on this the 18th day of November, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

Thomas Burns, of the city of Detroit, in said county, being first duly sworn, saith that he is twenty-five years of age, was born in Ireland, has resided in said city over ten years, is a naturalized citizen of the United States, and was such on the first Tuesday after the first Monday in November, A. D. 1858; that he resided ten days next preceding said Tuesday in the second ward of said city, at the house of Thomas Howrigan, and voted in said ward on said day at the congressional, State, county, and city election; am now a registered voter of said city and voted this present fall.

THOMAS BURNS.

Sworn and subscribed before me this 28th day of November, A. D. 1859.

MINUS T. LANE,
Justice of the Peace, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

James McCam, being first duly sworn, makes oath and saith that he is now twenty-three years of age, and voted in the second ward of the city of Detroit, in said county, at the election held on the 2d day of November, A. D. 1858, for representative in Congress, State, county, and city officers; that he voted under the name of Jas. McCann; that he was born in the State of New York; has lived in the city of Detroit about four years; lived at the house of Thomas Howrigan, in the second ward, about two weeks before and next preceding said election; am an unmarried man; have voted in said city both before and since said election. And further deponent saith not.

JAMES McCAM.

Sworn and subscribed before me this 21st day of November, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Jackson, ss:*

Joshua Clement, of said county, being duly sworn, says that he is a resident of the town of Leoni, in the county of Jackson and State of Michigan, and a qualified voter therein, and was at the election held for the first congressional district in the State of Michigan, on the 2d day of November, A. D. 1858; and that this deponent attended such election, and was present at the opening of the polls in the morning of that day, and was near the place of holding the election in said town during the greater part of that day. And this deponent further saith that the supervisor and township clerk of said town of Leoni were present at the opening of said polls on said

day, but that Ephraim Beebe, who, by virtue of his being the justice of the peace of said town having the shortest time to serve, should have been the third member of said board of inspectors, was not present at the time for opening said polls, and the vacancy caused by his absence was filled by the election, by the qualified voters present, of one Hiram Gardner; and said board of inspectors was thus formed, and consisted of the supervisor, Luther F. Grandy, the town clerk, Samuel Hoffman, and said Hiram Gardner. And this deponent further saith that before the election of the said Gardner, as aforesaid, the said supervisor and town clerk had assumed to act as a board of inspectors by the appointment of one —— Bartholomew, to be clerk of said election; and that said Bartholomew accepted such appointment without (as this deponent has good reason to believe, and does verily believe) taking the oath required by the laws of this State before he could be qualified to act; that he did not publicly, after such appointment at the place of holding said polls, take such oath; and deponent believes he did not qualify as such clerk by taking such oath; that immediately after the election of said Hiram Gardner, as aforesaid, as inspector of said election, said supervisor declared the polls of the election to be open, and proceeded with said town clerk to receive votes of electors or persons offering their votes at such election; that although said Hiram Gardner was present in the room where said election was held, he did not take the oath required by law to be taken by a person so elected to be an inspector, and did not sit with said supervisor and town clerk as such inspector, or take any part as a member of said board; and that in about half an hour after the opening of the polls as aforesaid, and after a considerable number of votes had been received, the said Ephraim Beebe arrived, and took his place as a member of the board of inspectors, and acted as such for the remainder of the day, notwithstanding the vacancy occasioned by his absence had been filled by election of said Gardner; that, as appears by the official returns of said election for said town, the whole number of votes given for representative in Congress therein was three hundred and twenty-one, of which William A. Howard received two hundred and thirty, and George B. Cooper ninety-one.

JOSHUA CLEMENT.

Subscribed and sworn to before me this 16th day of December, 1859.

SAMUEL HIGBY,
Notary Public for said county of Jackson, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

Caleb F. Davis, being first duly sworn, deposes and says that he is the father of Frank Davis, George M. Davis, and of Bunty Davis, (so called;) that said Frank and George are unmarried men, and were, on the first Tuesday after the first Monday in November, A. D. 1858, over twenty-one years of age; that they were all three born in the city of Detroit, and have been reared in said city; that on said Tuesday said Bunty Davis was not in the city of Detroit.

CALEB F. DAVIS.

Sworn and subscribed before me this 23d day of November, A. D. 1859.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne, ss:*

Stephen Martin, being first duly sworn, deposes and says that he is a justice of the peace in the city of Detroit; that he knows James Martin, and is his uncle; that said James Martin is the same person who was arrested in Canada, and fined for a breach of the peace on the Monday preceding the congressional election in said county, A. D. 1858; that said James is over twenty-five years of age; came to this country from Ireland when a lad with his parents; is a naturalized citizen of the United States, and has resided most of the time during the last eight years in the city of Detroit, in said county.

And further deponent saith not.

STEPHEN MARTIN.

Sworn and subscribed before me this 5th day of December, A. D. 1859.

A. W. SPRAGUE,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss:*

I, Enos T. Throop, clerk of the county of Wayne, State of Michigan, and clerk of the circuit court of the county of Wayne aforesaid, do hereby certify that the whole number of votes given for the office of county clerk of said county, at the general election held on November 2, A. D. 1858, was eleven thousand two hundred and twenty-nine, and were given for the following persons, viz:

For Enos T. Throop, five thousand six hundred and forty-five, (5,645.)

For David Walker, five thousand five hundred and seventy-seven, (5,577.)

Scattering, seven, (7.)

That of said votes, in the second ward of the city of Detroit, there were given—

For Enos T. Throop, two hundred and seventy-three, (273.)

For David Walker, two hundred and two, (202.)

And in the fifth ward of said city—

For Enos T. Throop, three hundred and sixty-three, (363.)

For David Walker, four hundred and sixty-four, (464.)

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court, at Detroit, this thirtieth day of December, in the year one thousand eight hundred and fifty-nine. [L. S.]

E. T. THROOP, *Clerk,*
Per J. PATCHIN, *Deputy Clerk.*

STATE OF MICHIGAN, *Wayne County, ss:*

J. Logan Chipman, being first duly sworn, says that the Enos T. Throop, mentioned in the foregoing certificate, was the democratic candidate for clerk of said county at the election mentioned in said certificate, and was elected at the same election at which George B. Cooper was elected to Congress; and this deponent further saith that said Throop has held office under said election without any contest or attempt at contest by the republican candidate who ran against him; and that said office is one of great political power and large emolument.

J. LOGAN CHIPMAN.

Sworn and subscribed before me this 30th day of December, A. D. 1859.

J. PATCHIN, *Deputy Clerk.*

MINORITY REPORT.

Mr. STEVENSON, from the Committee of Elections, submitted the following views of the minority, which were ordered to be printed, and the further consideration of the subject postponed until Tuesday next:

The undersigned, members of the Committee of Elections, to whom was referred the petition of William A. Howard, contesting the seat of George B. Cooper to a seat in the 36th Congress as a representative from the first congressional district of Michigan, and dissenting from a majority of said committee in their report rejecting the application of George B. Cooper, the sitting member, for further time to take evidence in support of the validity of his election, beg leave to submit the following special report:

The act of Congress approved 19th February, 1851, provides "that whenever any person shall intend to contest an election of any member of the House of Representatives he shall, within thirty days after the result of such election shall have been determined, give notice in writing to the member whose seat he designs to contest, and in such notice shall specify particularly the ground upon which he relies in the contest."

The member upon whom such notice is served "shall, within thirty days after the service thereof, answer the same, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer upon contestant."

This act further provides that when any contestant or returned member shall be desirous of obtaining any testimony he may apply to certain officers mentioned in said act to issue a writ of subpœna, directed to all such persons as shall be named to him, requiring them to attend before him at some time and place named in the subpœna, in order to be then and there examined respecting the said contested election. The *fourth* section of said act declares that every such witness shall be duly served with such subpœna at least *five* days before the day on which their attendance is required. A severe penalty is fixed by the act for the non-attendance of witnesses duly subpœnaed.

The *fifth* section declares that the party at whose instance such subpœna shall issue shall, *at least ten days* before the day appointed for the examination of the witnesses, give notice in writing to the opposite party of his intention to examine witnesses, which notice shall contain a statement of the time and place of the proposed examination. Section *nine* declares "that no testimony shall be taken after the expiration of sixty days from the day on which the answer of the member returned shall be served upon the contestant; *provided, however*, the House may at their discretion allow supplementary evidence to be taken after the expiration of said sixty days." Such is the law of Congress.

It appears that the sitting member received his certificate on the 30th day of November, 1858. Upon the 28th day of December, 1858, the contestant, Mr. Howard, served a notice upon the sitting member, Mr. Cooper, containing twenty-three points on which he contested his right to a seat as a representative in the thirty-sixth Congress. The answer of the sitting member, denying each and every allegation specified in contestant's notice, was served on the contestant, Mr. Howard, on January 26, 1859.

Within sixty days from this last-mentioned period the right of both the contestant and sitting member to take testimony was limited by the provisions of the act of 1851, and consequently expired on the 26th of March, 1859, (the 27th falling on Sunday.) After this period no testimony could have been taken without the leave of this House by either party.

The first notice of Mr. Howard to take proof in support of his claim bears date February 21, 1859, for the examination of four witnesses on March 4, 1859.

No proof was taken under this notice. It does not appear that the parties met, or that any subpœna was ever issued for the attendance of the witnesses on that day. As the seventh section of the act of 1851 requires both the notice and subpœna to be returned by the magistrates taking such proof, it may be fairly inferred that the failure to take such proof occurred from the non-attendance of the witnesses named in the notice. This inference is strongly fortified by the fact that the testimony of but one of these four witnesses named in this first notice (David A. Smith) was ever subsequently taken by the contestant.

The second notice of Mr. Howard, bearing date March 11, 1859, served on the same day on the attorney of sitting member, enumerates forty witnesses proposed to be examined by contestant in Detroit on March 21, 1859.

A third notice of Mr. Howard, bearing date March 11, 1859, served on sitting member's attorney upon the same day, enumerates twenty-six witnesses, including some named in the notice of same date, proposed to be examined on March 21, 1859, in Detroit, by contestant.

A fourth notice of Mr. Howard, dated March 15, 1859, served on same day on attorney of sitting member, enumerates thirteen witnesses to be examined in Detroit on March 25, 1859, by contestant.

The fifth and last notice, bearing date March 16, 1859, served on same day on attorney of sitting member, enumerates three witnesses, A. K. Edgar, E. T. Throop, and J. Patchin, to be examined in Detroit on March 26, 1859, by contestant.

The first subpœna summoned thirty-three witnesses to appear on March 21, 1859 the second subpœna summoned five witnesses to appear on March 25; the third subpœna summoned thirty-five witnesses to appear on March 26; and the last subpœna summoned two witnesses to appear forthwith.

The contestant examined one witness, Sylvester Larned, on March 21, and commenced the examination of another, which, without being completed, was continued until the 22d. On the 22d, 23d, 24th, and 25th, several other witnesses were examined; and upon the 26th day

of March he examined four witnesses, Daniel Cosly John Cosly, David Carr, and Andrew K. Edgar.

It appears that out of seventy-five witnesses summoned by contestant, fifteen witnesses only were examined.

It further appears the testimony of these fifteen witnesses, examined by contestant and examined by the sitting member, was commenced on March 21, and closed on March 26, the last day allowed either party for taking proof by the act of 1851.

No proof has been taken by the sitting member, George B. Cooper, in support of his claim to a seat on this floor, and, as a preliminary step to the investigation of the merits of this contest, he asks that further time be extended to him to rebut the testimony taken by the contestant, Wm. A. Howard, in support of his seat as a representative from the first congressional district of Michigan.

The act of 1851, although a salutary rule of action for the regulation of contested elections, to be observed as far as practicable, has by frequent decisions of this House been declared to be directory only. The express provisions of the act itself contemplate the taking of all supplementary evidence on the side of either party, whenever in the opinion of the House the purity, safety, and freedom of popular elec-elections shall demand, or the ends of substantial justice require it.

Whenever any application for further time is made to this tribunal by any party, it will hardly be denied that the House of Representatives will look into all the facts and circumstances attendant upon each application, and exercise a reasonable and salutary discretion in granting or refusing it.

Since the passage of the act of 1851, instances are found where time has been both granted and refused by this House, as in the contested election cases of Chapman *vs.* Ferguson, and Vallandigham *vs.* Campbell, during the 35th Congress. Neither of those decisions can be relied on as conclusive authority, unless in an exactly similar state of fact, which does not occur in the present application. Decisions rendered before the passage of the act of 1851, can have little or no weight in cases arising under it.

The safe solution of the question, whether the proposed application of the sitting member for further time to take testimony should be allowed, would seem to involve two propositions:

1. Does Geo. B. Cooper show his ability to impeach the testimony taken by contestant, and can such supplementary testimony be had in a reasonable time?

2. Has he been guilty of laches in a failure to take this proof at an earlier *date?*

To answer the first question properly, it is necessary to look somewhat into the grounds on which the contestant rests his claim, and some of the evidence by which he endeavors to sustain it.

The contestant gave notice, as one of his grounds of contest, that sundry persons who did not reside in the fifth ward in the city of Detroit, were permitted to vote in said ward for said Cooper. In support of this last proposition, contestant, upon the 26th of March, 1859, takes the testimony of Andrew K. Edgar, who directly proves that

nine of the votes cast for sitting member were illegal. This testimony was taken on the last day of the sixty days allowed by the statute of 1851 to take proof.

The sitting member now offers to impeach the testimony of said Edgar, and by the affidavits of J. S. Purdy, J. S. Blodget, A. W. Sprague, Benjamin Sparling, John Cronar, John Fuller, show that said Edgar is unworthy of belief. These affidavits are from gentlemen of character, some of them holding official positions in Detroit, and are referred to as appendix 1. Their depositions could be readily had in thirty days, and are vitally material to the issue in this controversy. Again; the contestant alleges as another ground of contest, that there was such force and violence used on the day of election at the polls in the second ward in the city of Detroit as to prevent more than one hundred electors, who desired to vote for contestant, but were prevented by violence and force from doing so, and that the force and violence continued throughout the day at said polls, and on this ground the vote of the second ward should be excluded. This allegation is attempted to be sustained by two witnesses, and the sitting member now offers the affidavits of C. J. Walker (now a law professor in the university of Michigan) and J. L. Chipman, (then the city attorney of the city of Detroit,) who wholly disprove the statements as to force and violence made by contestant's witnesses. These affidavits are referred to as appendix No. 2.

The undersigned will not dwell on the materiality of the testimony, sought now to be taken by the sitting member. It is vital to the merits of a proper determination of at least nine votes cast for George B. Cooper, and equally material for sustaining the entire poll-books of the second ward in Detroit, where Cooper received a majority of 76 votes.

When it is considered that the majority of George B. Cooper was only seventy-five votes over the contestant, nothing further need be urged in support of the materiality of the testimony disclosed in the affidavits offered by Cooper in support of his application.

2. What reason is offered by the sitting member for a failure to take testimony, and why was it not taken, within the sixty days after the filing of Cooper's answer?

In the opinion of the undersigned, the sitting member has been guilty of no such laches as to refuse his application; and the reason of his delay is mainly attributable to the late period fixed by contestant himself for taking the proof which is now sought to be rebutted. In common law trials a party, plaintiff or defendant, who is suddenly surprised by the introduction of testimony which he can show is untrue, is entitled to a continuance on application being made as soon as such testimony is introduced, and in many of the States such party, upon a sworn statement of surprise, accompanied by the affidavit of a witness that the statements of such witness are untrue, would be entitled to a new trial.

It is a well-established rule of law, that every party is to be believed until his statement under oath is impeached; and the known rules of evidence and well-established regulations of judicial pro-

cedure have nowhere required of a litigant, as a rule of diligence in the preparation of his suit, the summoning of witnesses to disprove any anticipated or actual false swearing of those persons offered upon the other side.

The undersigned think that George B. Cooper had no right to anticipate that any witness introduced by the contestant would swear falsely. He could not impeach any false swearing until such testimony had been given. If contestant took such testimony at so late a period that the sitting member could not have impeached or rebutted it, time should now be allowed him. It moreover appears that the sitting member could not possibly have coerced the testimony of a single witness to impeach any of the testimony taken by contestant. His whole testimony was taken between the 21st and 26th March, 1859. If the sitting member, therefore, had been ready in all respects to go on with his testimony, and the contestant would have waived the ten days' notice, yet, as the act of 1851 requires five days to intervene between the issuing of a subpœna and the day for taking the proof, no subpœna could have legally issued for the compulsory attendance of any recusant witness, by whom Mr. Cooper might have been enabled to impeach contestant's proof.

But the material statements of contestant's witnesses, which Mr. Cooper now desires to impeach, were not given until the last day of the sixty days. The sitting member therefore could by no diligence have legally disproved it. He did not receive notice that Edgar's testimony would be taken at all until the 16th March; and if he was required to anticipate the false swearing of Edgar, he could not have served notice until the 17th, and the notice required by the statute would have brought it to the 27th March, which was Sunday, and consequently a day after the sixty days had expired. If the application of the sitting member were transferred to a court of justice upon the state of facts disclosed in this record, it would be difficult to find any judicial tribunal which could hesitate to grant the continuance. It is claimed, however, on the other side, that Cooper should have served a notice on Howard, and gone on with his proof after the expiration of the sixty days, although it is admitted that such testimony could not have been read without the contestant's consent. No rule of law can be found in support of such a position. The law never requires any litigant to take testimony which it is incompetent to read without the consent of the adverse party. No authenticated case can be found in support of such a position, and it is difficult to imagine the reason on which such a rule could rest. It is insisted that such depositions would have shown how far the sitting member had impeached the statements of contestant's witnesses. To this it may be replied, that the affidavits accomplish to the fullest extent the same thing. If contestant is unwilling to admit these affidavits for want of notice, it is fair to presume he would have excepted to any depositions taken beyond the time authorized by the statute for taking the proof. Is it just as equitable to require either party to incur the cost of taking proof which his adversary has it in his power to reject? Nor is it sufficient to refuse this application to the sitting member, because many of the ffidavits used in the motion were taken in November and December, and some of them at a still later date.

The affidavits were all prepared before the application to take supplementary proof was made by the sitting member, that application could only be made to this House, and was made as a preliminary motion shortly after the organization of this committee. That rule would be as novel as extraordinary in jurisprudence, that would make the right of litigant to a continuance of his cause dependent on the date of the affidavits offered in support of it.

It is strongly insisted that to allow time would be to delay and perhaps fritter away the enjoyment of the contestant to a seat on this floor, to which he was legally elected.

The undersigned fully appreciate the strong necessity of speedy action in all contested elections, as due not less to popular representation than to the just right of the respective individuals seeking the high position of becoming such representative. They would grant no delay not demanded by the ends of public justice, and exerted by the highest considerations of public policy. Such, in their judgment, is the present application. The contestant should be estopped from any plea of delay when he chose to select the last day of the sixty for the examination of some of his most important witnesses now sought to be impeached, and thereby to place it beyond the power of the sitting member to take his proof. If this application should cause delay, it is because contestant did not take his testimony at a day early enough to permit its falsity to be shown.

While the undersigned impute no improper intention to the contestant in having selected for the taking of his proof the last five days of the sixty days fixed by the statute for closing the proof; and while they would be far from charging on him that he designedly selected the last day for the examination of the most important witness introduced in his behalf, with the view of preventing the sitting member from successfully impeaching the veracity of such witnesses examined on that day, it becomes wholly important that the purity of elections and the substantial justice of representative and individual rights shall not suffer, but that whenever a contestant shall take no proof until the last day authorized by law, the widest latitude should be given to the opposite party to impeach such testimony, if it can be satisfactorily done. No other construction should be given to this act of 1851. If either party choose to delay in the taking of proof as exhibited in this record, the most serious and alarming consequences might result from a denial of the right of the surprised party to impeach testimony designedly introduced at the end of the sixty days to prevent exposure—testimony which may be wholly unworthy of credit, and by which the popular voice is strangled, and a regularly and legally elected representative deprived of his rights on this floor.

The present application differs from all other reported cases in this remarkable fact: that permission is asked in the present case to impeach the veracity of witnesses who were examined at the last moment that the act of 1851 authorized any proof to be taken, and when, without the leave of this House, it was beyond the power of the sitting member to prove the unworthy character of the witnesses who have testified against his right to a seat here, however abundant the means of doing so; while in all the other reported cases of similar motions, the application has usually been for time to take testimony on the

merits of the controversy, and which, under the act of 1851, both parties have a right to do at the same time, during the sixty days authorized by the statute for taking proof.

The undersigned therefore recommend to this House the adoption of the following resolution:

Resolved, That thirty days be allowed George B. Cooper to take supplementary evidence in support of his claim to a seat as a representative from the first congressional district in the State of Michigan, and that a like indulgence be allowed the contestant, William A. Howard, each party giving five days' notice of the time and place of taking such proof. All of which is respectfully submitted.

J. W. STEVENSON.
LUCIUS J. GARTRELL.
JOHN A. GILMER.
W. W. BOYCE.

APPENDIX No. 1.

STATE OF MICHIGAN, *County of Wayne:*

Stephen P. Purdy, being duly sworn, says he is thirty-four years of age; that he has resided in the city of Detroit for fifteen years; that he has been a justice of the peace in said city of Detroit for four years last past; that he knows Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859, and has known his reputation for truth and veracity in the neighborhood where he has resided for the last three years, *and that said Edgar's reputation was bad, and that from the knowledge of said general character, this deponent would not believe said Edgar under oath.* And further the deponent saith not.

S. P. PURDY.

Subscribed and sworn to before me this 1st day of March, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne county, Michigan.

STATE OF MICHIGAN, *County of Wayne:*

Julius S. Blodget, being duly sworn, says that he is 21 years of age and upwards, and that he has resided in the city of Detroit, in said county, during the past four years, and during that time has been a deputy sheriff of said county; and that he knows Andrew K. Edgar, and has known said Edgar for about three years; and that he knew said Edgar on the 26th day of March, A. D. 1859, *and that he is well acquainted with said Andrew K. Edgar's character for truth and veracity in the neighborhood where he resides; and that said Edgar's character for truth and veracity was, on such above-mentioned date, bad, and from such general bad character for truth and veracity this deponent would not believe him under oath;* and further, that soon after the above-mentioned date said Edgar was arrested on a charge of larceny, and that said charge is still pending against him. And this deponent further

says that said Andrew K. Edgar has been a resident of this city and its vicinity during the past three years. And further deponent saith not.

JULIUS S. BLODGET.

Sworn and subscribed before me this 1st day of March, A. D. 1860.

W. CHAMP,
Notary Public, Wayne county, Michigan.

SNATE OF MICHIGAN, *County of Wayne:*

Ara W. Sprague, being sworn, says that he is 21 years old and upwards, and resides in the city of Detroit, and has resided in said city for ten years last past, and that for the past six years he has been a constable of the 2d ward in said city of Detroit; and that he knows one Andrew K. Edgar, and knew him on the 26th day of March, A. D. 1859; *and this deponent knows the reputation of said Edgar in the neighborhood where he resides for truth and veracity, and that said Edgar's reputation for truth and veracity is bad, and was bad at the above date, and from the general bad character of said Edgar in this city and its vicinity this deponent would not believe said Edgar under oath;* and this deponent has known said Edgar as a resident of this city and its vicinity for three or four years last past. And further saith not.

A. W. SPRAGUE.

Sworn aud subscribed before me this 1st day of March, A. D. 1860.

STEPHEN P. PURDY,
Justice of the Peace.

STATE OF MICHIGAN, *County of Wayne.*

Benjamin Sparling, being duly sworn, says that he is twenty-one years old and upwards, and that he is a resident of the fifth ward of the city of Detroit for the last ten years, and that during the most of that time his business has been that of a constable of said ward, and that he knows one Andrew K. Edgar, and knew him on 26th day of March, A. D. 1859, *and that he knew said Edgar's character for truth and veracity at that date, and that his character for truth and veracity is bad in the neighborhood where he resides, and from said general bad character, said Edgar is not worthy of belief on oath, and this deponent would not for that reason believe him under oath;* and further the deponent saith not.

BENJAMIN SPARLING.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne county, Michigan.

STATE OF MICHIGAN, *County of Wayne.*

John Cronan, being duly sworn, says he is twenty-one years old and upwards, and is a resident of the city of Detroit, and has resided in said city for the last twelve years, and for the last two years has been on the police of the city of Detroit, and *knows one Andrew K. Edgar, and knew him on the 26th day of March, A. D.*, 1859, *and knew his character for truth and veracity in the neighborhood where said Edgar resided at that date, and his character for truth and veracity was bad at that date, and from said general bad character of said Edgar, this deponent would not believe him under oath.* This deponent arrives at this conclusion from what he has heard people in this vicinity say of and about said Edgar; and that this deponent has heard of said Edgar more or less, as a resident of the city of Detroit, for the past two years; and further saith not.

JOHN CRONAN.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public in and for Wayne county, Michigan.

STATE OF MICHIGAN, *County of Wayne.*

John Fuller, being duly sworn, says that he is twenty-one years old and upwards, and that he is a resident of the fifth ward in the city of Detroit, and has been a resident of said county for the past twenty years, and has been in the city of Detroit for the last eighteen months past, and that since the 1st of January, A. D., 1859, his business has been that of a deputy sheriff of said county, and he is now deputy United States marshal for the district of Michigan; that this deponent *does not know Andrew K. Edgar personally, but this deponent has frequently heard said Edgar's character for truth and veracity spoken of by citizens of the city of Detroit and its vicinity, and remembers the time when said Edgar gave his evidence in the contested election case* on the 26th day of March, A. D., 1859; and from what this deponent has heard people say of the character of said Edgar for truth and veracity, in the vicinity where he has resided, it is bad, and *this deponent would not believe him under oath; but this deponent knows nothing against* said Edgar as to truth and veracity of his own personal knowledge; and further saith not.

JOHN FULLER.

Sworn and subscribed before me this 29th day of February, A. D. 1860.

WM. CHAMP,
Notary Public, Wayne county, Michigan.

APPENDIX No. 2.

STATE OF MICHIGAN, *County of Wayne:*

I, Charles J. Walker, of Detroit, being duly sworn, depose and say that I am by profession an attorney and counsellor-at-law, and am a law professor in the University of Michigan; I reside in the seventh ward of the city of Detroit, and have for many years; at the State election, November, 1858, I was a candidate for State senator; I spent the entire day at the polls and mostly at the seventh ward; I was for a short time at the fifth and sixth wards; *while at the seventh ward polls, which was for most of the day, I was an interested and careful observer of the manner in which the election was conducted;* I especially noticed the conduct of Thomas Howrigan, who acted as a democratic challenger; I can say with great confidence that I never saw a warmly contested election in the ward conducted more civilly; *there were no threats nor violence that could or did deter any voter from depositing his vote;* the votes were received at a window in the City Hall, which was too high to be reached from the ground, and a dry-goods box was placed in front of the window upon which voters got when they voted; at an early hour in the morning the republican challenger, Sylvester Larned, esq., took his position inside of the room where the votes were received at the window, and so placed himself that no democratic challenger could find or get a position there, and consequently they had to be outside; there was no other place they could occupy than the dry-goods box; here, for the most part, Mr. Howrigan was stationed; the box was quite too small for a convenient platform, and towards the close of the day there was some crowding upon it and naturally and inevitably some pushing, but there was much less than I have usually seen, and no violence and no difficulty in voting; *I do not believe that any voter lost his vote either from violence or fear of violence, or from any real difficulty in getting to the polls;* there was, of course, some rudeness of speech and some struggles to get uncertain voters to change their votes, but less than is usual at elections; special pains had been taken to impress upon democratic challengers that quiet and order must be preserved, and it was done to a remarkable degree; Sylvester Larned, the republican challenger, expressed himself very strongly at the close of the poll in relation to the peaceable character of the election, and especially as to the peaceable manner in which Howrigan had conducted himself.

C. J. WALKER.

Sworn and subscribed before me this 8th day of December, 1859.

HENRY R. MIZNER,
Notary Public, Wayne county, Michigan.

STATE OF MICHIGAN, *County of Wayne:*

J. Dogan Chipman, being first duly sworn, deposes and says that he is a lawyer by profession, and counsel for George B. Cooper, member of Congress from the first district of the State of Michigan;

that he was born and reared in the city of Detroit; that he knows, and has known from his earliest boyhood, Matthew Coughlin, Henry Hale, George Davis, Frank Davis, Cony Scanlin, Dominie Gallagher, John Hancock, John H. Smolk, (called Jack Smolk,) Bunty Davis, and Charles Dezalin, as residents of the city of Detroit, and American citizens; that he has also known for many years, in said city, James Martin and Harvey Van Meter, both reidents, as their parents have been, of said city; that all these persons he has named have grown from boyhood in said city, (except John Hancock, who is an elderly man,) and that the families of most of them, to the certain knowledge of this deponent, are old residents and citizens of said city. That Dezalin's real name is Jubenville; that he takes the name of Dezalin from the fact that his mother's first husband bore that name and his half brothers all bear it; that all the persons above-named stopped at the house of Thomas Howrigan, in the second ward, immediately before the first Tuesday, after first Monday in November, A. D. 1858; that they were there several days before that time; that Thomas Burns was also there, whom this deponent has known as a resident of said city during several years; also Thomas McCarthy, who has lived in said city, to the knowledge of this deponent, over ten years, who has, as this deponent knows, been turnkey at the jail, constable, deputy sheriff, and special policeman in said city, and was elected constable of said city again during the fall of 1859, and whom this deponent has long known as an actual voter in said city. And this deponent further says that he was at the polls of the second ward in said city *frequently during the election for congressional and other officers held on the first Tuesday after the first Monday in November, A. D.* 1858; *that he saw no violence, or disorderly conduct at said polls; that he was at said polls during the last hour or two before they closed; and that, though there was a great deal of laughing and joking, he neither saw nor heard any violence, or attempt to prevent republicans from voting;* that he saw Thomas M. Howrigan at said polls several times during the day, and that his conduct was peaceable and decent, and that the same is true of James Martin; that Howrigan seemed to be endeavoring to keep things quiet; this deponent knows Daniel Crosby, who has the reputation of being a quarrelsome and litigious man; that from a suit before the police court, after the election, deponent learned that Crosby had had a difficulty at the polls with a man named Dutch Nick; that this deponent heard Crosby's testimony upon said suit; that the difficulty was of a personal nature, and that the same parties had had difficulties before; that this deponent's recollection is that Sylvester Larned, esq., was Crosby's counsel; that said Larned, as a witness for Mr. Howard in the contest of the seat of Mr. Cooper in Congress, declined to answer whether said difficulty was of a personal nature; and that deponent further swears that said Larned, after said election, informed him that Howrigan's conduct at said polls was peaceable and decent; that he said this in a conversation about an article in the republican paper called the Tribune, published in said city, which he pronounced "untrue," and which accused Howrigan of disorderly conduct at the polls, and told this deponent that he should speak to Mr. Fralick about the untruth of the article, in order to aid Howrigan

in obtaining an appointment under Fralick, who was then the democratic sheriff elect of Wayne county.

And this deponent further swears that he is informed and believes that said Daniel Crosby was not, on said Tuesday, a resident of the second ward, but lived and actually voted in the first ward of said city.

J. LOGAN CHIPMAN.

Sworn and subscribed before me this 5th day of December, A. D. 1859.

WM. JIMISON,
Notary Public, Wayne County, Michigan.