

House Calendar No. 81.

68TH CONGRESS, } 1st Session. }	HOUSE OF REPRESENTATIVES. {	REPORT No. 224.
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CHANDLER v. BLOOM.

FEBRUARY 23, 1924.—Referred to the House Calendar and ordered to be printed.

Mr. ELLIOTT, from the Committee on Elections No. 3, submitted the following

REPORT.

[On the contested election case of Walter M. Chandler v. Sol Bloom, nineteenth congressional district of New York.]

The Committee on Elections No. 3, having had under consideration the contested-election case of Walter M. Chandler v. Sol Bloom, from the nineteenth congressional district of the State of New York, after careful consideration of the same, respectfully submits herewith its report to the House of Representatives.

STATEMENT OF THE CASE.

At the special election held in the nineteenth congressional district of the State of New York on January 30, 1923, according to the official returns, Sol Bloom, the contestee, who was the Democratic candidate, received 17,909 votes and Walter M. Chandler, the contestant, who was the Republican candidate, received 17,718 votes. As a result of these returns Sol Bloom, the contestee, was declared elected by a plurality of 191 votes over his Republican opponent, Walter M. Chandler, and a certificate of election was duly issued to him by the secretary of state of New York.

On March 3, 1923, the contestant served on the contestee a notice of contest in which were set forth numerous grounds of contest. On the 10th day of May, 1923, the contestant served on contestee an amended notice of contest, in which additional grounds of contest were set forth and the various grounds of contest set forth in the contestant's original and amended notice of contest may be summarized under three main heads:

1. That an examination and recount of the official ballots cast at said special election would show that the contestant herein and not the contestee had received the greatest number of legal votes cast at said election.

2. That in many and various election districts of said nineteenth congressional district of New York illegal voting had taken place and that those who voted illegally had voted for the contestee herein, and that if said illegal votes were subtracted from the votes credited to the contestee the contestant would be shown to have received the greatest number of legal votes cast at said election.

3. That in many election districts of said congressional district irregularities, frauds, and crimes were committed on a large scale both by illegal voters and by election officers in flagrant violation of the election laws of New York State, and that said irregularities, frauds, and crimes were committed by the friends of the contestee and in his interest.

And that if, in said districts where the conduct of the election and the canvass and return of the votes were marked by such utter disregard of law that there was in fact no legal election, the polls were purged or rejected, contestant would be found to have received the greatest number of legal votes cast at said special election.

The contestee on the 2d day of April, 1923, answered the contestant's original notice of contest, in which he denied all the allegations contained therein.

The contestee on the 15th day of May, 1923, answered the contestant's amended notice of contest, in which he denied all of the allegations contained therein.

WORK OF THE COMMITTEE.

The testimony in the case having been printed and printed briefs having been duly filed by both parties, hearings were given to the parties by the committee on Monday, January 21; Tuesday, January 22; Wednesday, January 23; Thursday, January 24; Friday, January 25; Saturday, January 26; Monday, January 28; Tuesday, January 29; Wednesday, January 30, 1924, at which arguments were presented by the contestant and his counsel, Leonard J. Obermeier, Esq., and Robert P. Levis, Esq., and the contestee and his counsel, J. Sidney Bernstein, Esq. Since the close of the hearing the committee has examined the long and voluminous record and given the case most careful and painstaking consideration.

RECOUNT OF DISPUTED AND PROTESTED BALLOTS.

The contestant and contestee had conducted an official recount of the ballots cast in said election in which it was determined that the contestee had received 17,802 apparently good ballots and the contestant had received 17,676 apparently good ballots, leaving an apparent majority for Bloom of 126. Several of the ballots not counted in the official recount were claimed to be good, and the committee under direction of the House of Representatives had all of the disputed and void ballots cast in said election brought before it and canvassed and found that 83 of said rejected ballots were good and 55 of them should have been counted for the contestee and that 28 of them should have been counted for the contestant, which would give the contestee 17,857 and the contestant 17,704, leaving the contestee a majority of 153.

ILLEGAL VOTING BY PERSONS NOT PROPERLY REGISTERED.

Under section 150 of the election laws of New York no one is allowed to vote who is not a citizen and who has not been registered under the registration law of said State, and if he removes from the election district in which he is registered to another election district before the day of election, at which he offers to vote, he loses his right to vote, unless he appears before the board of elections of New York City, if he is a voter in New York City, and applies for a transfer or special registration to permit him to vote. Fifteen voters who voted at the special election had removed from the district in which they were registered and in which they had voted at the preceding general election of November, 1922. These voters, the record shows, had not secured a transfer or special registration from the board of elections of New York that would permit them to vote legally at the special election January 30, 1923.

There is evidence in the record to the effect that at least 11 of these voters voted for contestee, that 3 of them voted for contestant, and that 1 of them stated in a sworn affidavit that he voted for contestee, and in his deposition which was taken in this case he testified that he voted for contestant.

ALLEGED ILLEGAL VOTES BECAUSE VOTERS FAILED TO SIGN THEIR NAMES IN OFFICIAL REGISTRY OF VOTERS, TWENTY-EIGHTH ELECTION DISTRICT OF THE ELEVENTH ASSEMBLY DISTRICT, WHICH REGISTRY WAS USED AT THE SPECIAL ELECTION FOR ENTERING SIGNATURES OF THOSE WHO VOTED.

Under the New York election law, 1922, sections 202 and 207, each voter is required to place his signature in the signature column of the official registry of voters before he shall be allowed to vote. It is alleged that James Bennett, who voted ballot No. 1; Frank W. Scott, who voted ballot No. 2; Israel Rivkin, who voted ballot No. 3; William Murphy, who voted ballot No. 4; Henry Seeman, who voted ballot No. 5; Patrick McMahon, who voted ballot No. 6; each failed to sign his name in said register and that by reason thereof their votes were illegal. The contestant maintains that their votes should be rejected. There is no evidence in the record, however, to show how any of these persons voted. It is contended by the contestant that inasmuch as five of these voters were enrolled as Democrats, that in the absence of evidence to the contrary, party affiliation of an illegal voter may be considered in determining from whom such votes should be deducted or for whom they should be counted.

TWENTY-THIRD ELECTION DISTRICT OF THE ELEVENTH ASSEMBLY DISTRICT.

The contestant contends that the poll of the twenty-third election district of the eleventh assembly district should be rejected for the following reasons:

(a) The board of inspectors of said election district was illegally constituted and organized, and was, therefore, without authority to act.

(b) In this election district 53 ballots were stolen from the pile of unused or unvoted ballots, and a large majority of them were undoubtedly voted for the contestee, Sol Bloom, by what is called shifting or substitution of ballots.

(c) In this election district the record discloses that illegal voting by repeaters and other illegal voters took place on a large scale.

(d) Electioneering within the polling place and within the prohibited limit of 100 feet by means of banners and pictures of Bloom, the contestee, and by personal solicitation of his workers, including the Democratic election inspectors themselves, was carried on in this election district, in violation of the election laws of New York.

(e) Unsworn persons, other than election officers, were permitted to handle the official ballots both during the day and at the count and canvass of the ballots at night, in violation of the election laws of New York.

(f) There was intimidation of Republican workers, who were compelled to leave the election district when most needed in the afternoon of election day by organized bands of ruffians, evidently friends of the contestee herein, who threatened the said Republican workers with fractured skulls and with death if they failed to leave the district at once.

(g) Drunkenness and boisterous conduct characterized the actions of the Democratic chairman of the board of inspectors, David Elbern, and the Democratic captain, George Rosenberg, to such an extent that the freedom of the election in that district was destroyed, that intimidation resulted, that scandal disgraced the entire proceedings, and that the election results and returns were rendered unreliable thereby.

(h) The method of counting the votes and the preparation of the tally sheets after the close of the polls in this election district were in flagrant violation of the election laws of New York providing for a true count and an accurate return of votes cast.

(i) The election returns from this particular election district, as filed with the board of elections of New York City, and with the county clerk of New York County, were evidently deliberately false returns, for, although the election inspectors knew at noon of election day that 53 ballots had been stolen from the pile of unvoted ballots and had not been recovered, they failed to report them as missing ballots in their election returns, but, on the contrary, reported the full number of unvoted ballots.

THIRTY-FIRST ELECTION DISTRICT OF THE SEVENTEENTH ASSEMBLY DISTRICT.

The contestant contends that the poll of the thirty-first election district of the seventeenth assembly district should be rejected for the following reasons:

(a) Because the board of inspectors of said election district was illegally constituted and organized, and was therefore without authority to act.

(b) Because there was electioneering within the polling place and within the prohibited limit of 100 feet in said election district by means of banners and pictures of Bloom, the contestee, and by personal solicitation of his workers, in violation of the election laws of New York.

(c) Because the secrecy of the ballot was openly violated in said election district by the Democratic election officers, in violation of the election laws of New York.

(d) Because the Democratic inspectors of election deliberately tore, erased, and mutilated many ballots, thus violating the secrecy of the ballot and furnishing proof of a criminal conspiracy to corrupt voters, in violation of both the civil and criminal election laws of New York.

(e) Because such methods of intimidation were employed by the Democratic election officers and workers in said election district that the Republican officers and workers were prevented from properly performing their official duties, thus destroying freedom of official action and rendering unreliable the election returns from said district.

(f) Because the canvass of the ballots and the preparation of the tally sheets were in flagrant violation of the election laws of New York.

THIRTIETH ELECTION DISTRICT OF THE SEVENTEENTH ASSEMBLY DISTRICT.

The contestant contends that the poll of the thirtieth election district of the seventeenth assembly district should be rejected for the following reasons:

(a) Because 34 ballots were stolen from the pile of unused or unvoted ballots and were voted for Sol Bloom, contestee, by what is known as shifting or substitution of ballots.

(b) Because there was a deliberately false and fraudulent return of votes by the board of inspectors of this election district.

TWENTY-NINTH ELECTION DISTRICT OF THE SEVENTEENTH ASSEMBLY DISTRICT.

The contestant contends that the poll of the twenty-ninth election district of the seventeenth assembly district should be rejected for the following reasons:

(a) Because the board of inspectors of said districts was illegally constituted and organized and was, therefore, without authority to act.

(b) Because there was a violation in this district of the secrecy of the ballot as well as open corruption of voters with whisky and with money.

(c) Because there was illegal voting in this district by repeating, in which Democratic election officers and workers personally participated.

TWENTY-FIFTH ELECTION DISTRICT OF THE SEVENTEENTH ASSEMBLY DISTRICT.

The contestant contends that the poll of the twenty-fifth election district of the seventeenth assembly district should be rejected for the following reasons:

(a) Because the board of inspectors was illegally constituted and organized and was therefore without authority to act.

(b) Because the record discloses the fact that there was a well-formed conspiracy in this district to carry the election for Bloom, the contestee, by fraud and intimidation.

GENERAL ALLEGATION OF ALLEGED ILLEGAL VOTING BY REPEATERS
AND OTHER ILLEGAL VOTERS.

The contestant contends that the House of Representatives should reject and declare null and void the certificate of election now held by Sol Bloom, the contestee herein; and should, furthermore, determine and declare that the said Sol Bloom did not receive the greatest number of legal votes cast at the special election of January 30, 1923; but that Walter M. Chandler, the contestant herein, did receive the greatest number of legal votes at said special election and is entitled to a seat in the Sixty-eighth Congress of the United States from the nineteenth congressional district of New York, for the reason, among other reasons, that the alleged majority of 191 votes returned by the State board of canvassers for the State of New York for the contestee herein was only an apparent majority and was caused by many hundreds of illegal votes which were cast for the said Sol Bloom at said special election by repeaters and other illegal voters.

LAW APPLICABLE TO THE CASE.

It is the rule, adopted in the case of *Farr v. McLane*, Sixty-sixth Congress, supported by a long list of authorities, that where illegal votes were cast and it could be ascertained for whom they voted these votes should be subtracted from the poll of the person for whom they voted, and if it could not be ascertained for whom they voted they should be subtracted pro rata from the total vote of the two candidates. In the well-considered case of *Gill v. Dyer*, Sixty-third Congress, the following rules were laid down in the case of conspiracy and fraud:

Conspiracies and fraud are frequently not susceptible of direct or positive proof. They usually are connived at and concocted in secret. They may be established by evidence of facts and surrounding circumstances, which, properly linked together agreeably to rules of law, exclude the presumption of innocent conduct and point logically and convincingly to the fact, and satisfy both the mind and conscience that the conspiracy was formed or the fraud was committed.

In *Noyes v. Rockwell*, Fifty-second Congress (Rowell's Dig. 716), the following rule was laid down:

Fraud can rarely, if ever, be proved by direct evidence, and the rule is that whenever a sufficient number of independent circumstances which point to its existence are clearly established, a prima facie case of its existence is made, and if this is not met by explanation or contradiction it becomes conclusive.

And in the case of *Mitchell v. Walsh*, Fifty-fourth Congress (Rowell's Dig. 717), the above-quoted rule was adopted.

In the judgment of the committee the returns in the second, third, fourth, fifth, ninth, fourteenth, and seventeenth precincts were so tainted with fraud and misconduct on the part of the election officials that they must be regarded as utterly unreliable, and the bold, venturesome, unlawful conduct of these officers in the seven precincts compel the committee, in the observance of what they deem the law applicable to this case, to reject the several polls.

The rule which applies to such cases is well stated in the oft-quoted case of *Washburn v. Voorhees* (2 Bartlett Cont. Cases, 58):

When the result in any precinct has been shown to be so tainted with fraud that the truth can not be deducible therefrom, then it should never be permitted to form a part of the canvass. The precedents, as well as the evident require-

ments of truth, not only sanction but call for the rejection of the entire poll when stamped with the characteristics here shown.

And in that case the elections committee further declared:

Indeed, the proposition is too plain to admit of dispute. To hold as true that which is so false and fraudulent that the truth can not be deduced therefrom, is to hold to an absurdity. The rule here laid down is none other than the postulate that that which is false can not be true. In adopting this rule the committee do not lose sight of the danger which may attend its application. Wholesome and salutary, not less than necessary, in its proper use, it is extremely liable to abuse. Heated partisanship and blind prejudice, as well as indifferent investigation, may under its cover work great injustice. It is not to be adopted if it can be avoided. No investigation should be spared that would reach the truth without a resort to it. But it is not to be forgotten or omitted if the case calls for its application. If the fraud be clearly shown to exist to such an extent as to satisfy the mind that the return does not show the truth, and no evidence is furnished by either party to a contest, and no investigation of the committee enables them to deduce the truth therefrom, then no alternative is left but to reject such a return. To use it under such a state of facts is to use as true that which is shown to be false.

And the principle laid down in that case was adopted and followed in the case of *Dodge v. Brooks*, Thirty-ninth Congress (2 Bartlett 78; Rowell's Dig. 203).

In *Finley v. Walls*, in the Forty-fourth Congress (Smith, 389; Rowell's Dig. 714), the rule is thus stated:

The law is that where fraud is proved to have been committed by the officers of an election no reliance can be placed upon any of their acts, and their return must be rejected as wholly unreliable. The party claiming under the election must prove the actual vote in some other way.

In *Wise v. Young*, in the Fifty-fifth Congress (2 Hinds' Prec. 650), it was declared that where returns are falsified by election officers they have no prima facie effect.

These and other kindred authorities which have obtained in election cases in the House of Representatives require the rejection of the returns.

SUMMARY AND CONCLUSION.

The committee therefore finds that of the 15 illegal votes cast by the voters who had lost their right to vote by moving to another precinct, 11 of them were cast for Bloom and should be deducted from his total vote, and that 3 were cast for Chandler and should be deducted from his total vote. The committee is unable to determine from the evidence for whom the other vote was cast and finds that it should be deducted pro rata from the votes of the contestant and contestee.

That of the 6 votes cast by the voters who failed to sign their names in the official registry in the twenty-ninth election district of the eleventh assembly district, the evidence does not disclose for whom they were voted, and if they were rejected it would have no bearing upon this case on account of the fact that they should in that event be subtracted pro rata from the votes of the contestant and contestee; for this reason the committee does not feel that it is necessary to decide the question of the legality of said votes.

After a careful and exhaustive consideration of the evidence and hearings in this case the committee finds that all of said election districts are tainted with fraud. That in the twenty-third election district of the eleventh assembly district and in the thirtieth and

thirty-first election districts of the seventeenth assembly district there was such an utter, complete, and reckless disregard of the provisions of the election laws of the State of New York involving the essentials of a valid election, and the returns of the election boards therein are so badly tainted with fraud that the truth is not deducible therefrom, and that it can be fairly said that there was no legal election held in the said election districts.

Consequently in accordance with the universally accepted principles of the law governing contested elections and in conformity with a long line of congressional precedents, from the Missouri case of *Easton v. Scott* in the Fourteenth Congress (Rowell's Dig. 68) down to and including the cases of *Gill v. Dyer* in the Sixty-third Congress, *Wickersham v. Sulzer* in the Sixty-fifth Congress, *Tague v. Fitzgerald* in the Sixty-sixth Congress, *Farr v. McLane* in the Sixty-sixth Congress, and *Paul v. Harrison* in the Sixty-seventh Congress, the committee is of the opinion that the entire returns of the twenty-third election district of the eleventh assembly district and the thirtieth and thirty-first districts of the seventeenth assembly district should be rejected.

Rejecting the returns from the above three precincts and deducting from the total votes of the contestant the three votes illegally cast for him and from the total votes of the contestee the 11 votes illegally cast for him in the remaining precincts of the district aforesaid, the result of the congressional election held in the nineteenth congressional district of the State of New York on January 30, 1923, would be as follows:

Walter M. Chandler, Republican, received 17,504 votes, and Sol Bloom, Democrat, received 17,280 votes, and the contestant is elected by a majority of 224 votes.

The committee therefore respectfully recommends to the House of Representatives the adoption of the following resolutions:

Resolved, That Sol Bloom was not elected a Member of the House of Representatives from the nineteenth congressional district of the State of New York in this Congress and is not entitled to retain a seat herein.

Resolved, That Walter M. Chandler was duly elected a Member of the House of Representatives from the nineteenth congressional district of the State of New York in this Congress and is entitled to a seat herein.

