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JUDICIAL DECISIONS AFFECTING THE CORRUPT PRACTICES LAWS

COMPLEMENT TO A COMPILATION OF THE LAWS RELATING TO CORRUPT PRACTICES AT ELECTIONS IN THE UNITED STATES

PRESENTED BY MR. NYE

APRIL 10 (legislative day, APRIL 8), 1940.—Referred to the Committee on Printing

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Prepared by
Dr. Harry Best

SENATE RESOLUTION NO. 258

[Reported by Mr. HAYDEN]

IN THE SENATE OF THE UNITED STATES,
June 3 (legislative day, May 28), 1940.

Resolved, That the manuscript entitled "Judicial Decisions Affecting the Corrupt Practices Laws in the United States", submitted by Senator Gerald P. Nye on April 10, and referred to the Committee on Printing, be printed as a Senate document.

Attest:

EDWIN A. HALSEY,
Secretary

FOREWORD

The definition herein employed of the term "corrupt practices" is the same as that employed in "A Compilation of the Laws Relating to Corrupt Practices at Elections in the United States" (75th Cong., 1st sess., S. Doc. No. 11, 1937). (Offenses on the order of bribery, repeating, impersonation of a voter, etc., are not included.) Judicial decisions affecting these laws are thus considered under the following particular headings: (1) the kinds of elections to which the laws apply; (2) the limitation of expenditures for campaign purposes; (3) the regulation of contributions and disbursements; (4) the requirement of the filing of statements regarding receipts and expenditures; (5) the proper designation of political literature; (6) the prohibition of contributions by corporations; and (7) the enforcement of the corrupt practices provisions. Decisions having only a slight bearing upon the corrupt practices laws are in general not considered. Citations in the decisions which do not directly relate to these laws or to decisions upon them are for the most part omitted.

HARRY BEST,
University of Kentucky.

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CHAPTER I

DECISIONS RELATING TO KINDS OF ELECTIONS TO WHICH LAWS APPLY

The matters upon which judicial decisions have been rendered in respect to the kinds of elections to which the corrupt practices relate are three: the applicability of State laws to elections for Federal offices; the applicability of Federal laws to elections of like character, especially primary elections; and the applicability of State laws in general to local elections or to elections upon public measures submitted to popular vote.

The first matter has been passed upon judicially in but a single instance, the State in which it has received attention being Ohio, and the question at issue having to do with whether a candidate for the office of Representative in the Federal Congress is included in the general provisions of the State corrupt practices laws. The case is that of *State* v. *Russell,* in 1900 (20 O. C. C. 551, 11 O. C. D. 299; see also 10 O. C. D. 255, 8 O. N. P. 54). Here a criminal action had been brought against an unsuccessful candidate for the office referred to because of his failure to file a statement of his expense as required. The action concerned the imposition of two different forms of punishment prescribed: the infliction of a fine and the rendering void of the election. To the former, the court could find no objection, the amount of fine to be imposed being duly determined by the jury. It was the second matter that presented the real issue, involving as it did the question of eligibility to an office of Federal character. As to this, the court held that the legislature had no power to enact. Inasmuch as the power to decide with regard to the qualifications of its members rested, under the United States Constitution, with Congress alone, the court felt called upon to make inquiry only with regard to whether there were added or imposed by the statute "conditions, qualifications, or obligations" which were not rightfully within the province of the legislature, or whether for want of compliance with a State law a Member of Congress could be deprived of his seat. Respecting the provision in question the court said:

> Is it not a disqualification? This is certain: it is something that disqualifies a person from accepting the office. It removes him entirely from becoming a Congressman under that regulation. And it is hard to see how a person can be disqualified by anything unless this thing disqualifies him and adds something when it clearly does not come under the qualifications required by the United

States. * * * To our minds, this law adds a circumstance; that is, the person who is elected must have it to appear. The circumstance must exist that he has not violated the law.

Hence the statute was to this extent regarded as being unconstitutional.

The applicability of Federal laws to elections to Federal offices has likewise been passed upon in but a single instance, in the case of *United States* v. *Burroughs* in 1933 (65 Fed. (2), 796, 62 D. C. App. 163; see also 290 U. S. 534, 54 Sup. Ct. 287, 78 L. Ed. 484). Here an indictment had been brought with respect to the requirement of the Federal law as to elections for Presidential and Vice-Presidential electors, of statements of receipts and expenditures on the part of voluntary political committees. It was claimed that the Federal statute was unconstitutional in that it might interfere with the conduct of elections and the appointment of Presidential electors in States which were presumed to have exclusive jurisdiction thereupon. The court in rather summary fashion declared that there could not be any such interference, at the same time calling attention to the fact that no duties were imposed in the law upon the electors provided for.

A matter of much greater importance has had to do with whether the Federal corrupt practices law has relation to primary elections as well as to final elections for membership in Congress—that is, whether the Federal Congress has, according to the Constitution of the United States, control of both primary and general elections in respect to its members. The question came before the United States Supreme Court in 1920, in the case of *Newberry* v. *United States* (256 U. S. 232, 41 Sup. Ct. 469, 65 L. Ed. 913).[1]

The court below had overruled the demurrer that the provisions of the Federal Corrupt Practices Act upon which the indictment was had was unconstitutional in that the assumed power of Congress to regulate primary elections was in excess of the powers granted to it by Article I, section 4, of the Constitution of the United States, this section being as follows: "The times, places, and manner of holding elections for Senator and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choos-

[1] While the judgment of the entire court was in favor of the defendant, and for the reversal of the judgment of the lower court in finding him guilty, the views of the several justices varied considerably. By five the law under consideration was held to be void as being unconstitutional in authorizing Federal control of primary elections in one of the States of the Union, though by one of these five opinion of the matter was held in reserve according to the bearing upon it of the Seventeenth Amendment, later adopted, providing for the popular election of United States Senators. By the remaining four justices the opinion is one of reversal of the judgment of the lower court, because of the nature of the instructions submitted to the jury by the trial court, the constitutionality of the law not being questioned, but upheld—though there were two separate opinions upon this subject, one concurred in by two other justices. The case was on appeal by direct writ of error from a Federal district court in Michigan. The defendant, Newberry, and 134 other persons had been charged with a violation of the Federal corrupt practices law, which prohibited a candidate for the office of Representative in Congress or United States Senator from giving, contributing, expending, or promising, in the procuring of his "nomination or election," a greater amount in the aggregate than was permitted by the laws of the State in which such candidate resided—the amount in no event to be in excess of $5,000 for the office of Representative and $10,000 for the office of Senator "in any campaign for his nomination and election." Not included within the limitation were certain expenditures for personal expenses, fees, stationery, telephone charges, etc. By the Corrupt Practices Act of Michigan, the expenditures of a candidate for office in general might not be greater than a sum equal to 25 percent of one year's compensation for nomination and a like sum for election (or 50 percent of 1 year's compensation for both nomination and election), which for the office of United States Senator would be $3,750. The defendant had been a candidate for the office of United States Senator in the Republican primary election in the State of Michigan in 1918, in which election he was successful, as he was also in the ensuing final election. It was contended that this candidate with the others referred to above had from December 1, 1917, to November 1, 1918, conspired and agreed to expend the sum of $100,000, of which sum no part was to be for the items expressly excepted in the statute, but for other purposes which were specifically set forth in the indictment. Most of these expenses alleged to be illegal were in connection with the primary election campaign, only minor ones being in connection with the final election.

ing Senators." The overruling of this demurrer was held to be error in the view of the majority of the Supreme Court. In the words of McReynolds, J.:

Manifestly this section [of the Federal statute] applies not only to final elections for choosing Senators, but also to primaries and conventions of political parties for the selection of candidates. Michigan and many other States undertake to control these primaries by statutes and give recognition to their results. And the ultimate question for solution here is whether, under the grant of power to regulate "the manner of holding elections," Congress may fix the maximum sum which a candidate therein may spend, or advise or cause to be contributed and spent by others to procure his nomination. * * *

[After the quoting of the provision of the Constitution above given.] Here is the source of Congressional power over the elections specified. It has been so declared by this Court. * * *

We find no support in reason or authority for the argument that because the offices were created by the Constitution, Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from section 4. * * *

Undoubtedly elections within the original intendment of section 4 were those wherein Senators should be chosen by legislatures and Representatives by voters possessing "the qualifications requisite for electors of the most numerous branch of the State legislature." Article I, sections 2, 3. The Seventeenth Amendment which directs that Senators be chosen by the people neither announced nor required a new meaning of election, and the word now has the same general significance as it did when the Constitution came into existence—final choice of an officer by the duly qualified electors. * * * Primaries were then unknown. Moreover, they were in no sense elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors. General provisions touching elections in Constitutions or statutes are not necessarily applicable to primaries—the two things are radically different. And this view has been declared by many State courts. * * *

Sundry provisions of the Constitution indicate plainly enough what its framers meant by elections and the "manner of holding them." * * *

The plain words of the 17th Amendment, and those portions of the original Constitution directly affected by it [together with the history of this Amendment] should be kept in mind. * * *

Because deemed appropriate in order effectively to regulate the manner of holding general elections, this Court has upheld Federal statutes providing for supervisors and prohibiting interference with them, declaring criminal failure by election officers to perform duties imposed by the State, and denouncing conspiracies to prevent voters from freely casting their ballots or having them counted. * * * These enactments had direct and immediate reference to elections by the people, and decisions sustaining them do not control the present controversy. Congress clearly exercised its power to regulate the manner of holding an election when it directed that voting must be by written or printed ballot or voting machines. * * *

The authority [of the national government] would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of persons who may choose, or be chosen, as has been remarked upon another occasion, are defined and fixed by the Constitution, and are unalterable by the legislature. * * *

Our immediate concern is with the clause which grants power by law "to regulate the *manner of holding* elections for Senators and Representatives"—not broadly to regulate them. As an incident to the grant there is, of course, power to make all laws which shall be necessary and proper for carrying it into effect. Article I, section 8. Although the 17th Amendment now requires Senators to be chosen by the people, reference to the original plan of selection by the legislature may aid in interpretation.

Who should participate in the specified elections was clearly indicated—members of the State legislature and those having "the qualifications requisite for electors of the most numerous branch of the State legislature." Who should be eligible for election was also stated. * * * Subject to these important limitations, Congress was empowered by law to regulate the times, places, and manner of holding elections, except as to the places of choosing Senators. * * *

If it is practically true that, under present conditions, a designated party candidate is necessary for an election—a preliminary thereto—nevertheless his selection is in no real sense part of the manner of holding the election. This does not depend upon the scheme by which candidates are put forward. Whether the candidate be offered through primary, or convention, or petition, or request of a few, or as the result of his own unsupported ambition, does not directly affect the manner of holding the election. * * *

Elections of Senators by State legislatures presupposed selection of their members by the people; but it would hardly be argued that therefore Congress could regulate such selection. * * *

We cannot conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of the power to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the power expressly granted. On the other hand, its exercise would interfere with purely domestic affairs of the State, and infringe upon liberties reserved to the people.

It should not be forgotten that, exercising inherent police power, the State may suppress whatever evils may be incident to primary or conventions. As "each House shall be the judge of the elections, returns, and qualifications of its own members," and as Congress may by law regulate the times, places, and manner of holding elections, the national Government is not without power to protect itself against corruption, fraud, or other malign influences.

McKenna, J., concurred in the foregoing opinion as applied to the statute under consideration, which was enacted prior to the 17th Amendment, but reserved the question of the power of Congress under that Amendment.

Of the dissenting opinions in the matter, upholding the constitutionality of the Federal corrupt practices law, and affirming the right of Congress to control primary elections for the office of United States Senator, that of White, C. J., may first be considered, though concurring in a judgment of reversal of the judgment of the lower court for reasons which we are later to examine.[1] After an examination of the temporary legal machinery to be in operation in connection with the changes effected by the 17th Amendment, and until a due election law could be enacted, to apply to the election of Senators, he proceeds as follows:

The provisions of sections 2 and 3 of Article I of the Constitution, fixing the composition of the House of Representatives and of the Senate, and providing for the election of Representatives by vote of the people of the several States, and of Senators by State legislatures, were undoubtedly reservoirs of vital Federal power, constituting the generative sources of the provisions of section 4, clause 1, of the same Article, creating the means for vivifying the bodies previously ordained (Senate and House). * * *

As without this grant no State power on the subject was possessed, it follows that the State power to create primaries as to United States Senators depended upon the grant for its existence. It also follows that, as the conferring of the power on the States and the reservation of the authority in Congress to regulate being absolutely coterminous, except as to the places of choosing Senators, which is not here relevant, it results that nothing is possible of being done under the former which is not subjected to the limitations imposed by the latter. * * *

But it is said that as the power which is here challenged is the right of the State to provide for and regulate a State primary for nominating United States Senators free from control of Congress, and not the election of such Senators, therefore, as the nomination primary is one thing and the election another and different thing, the power of the State as to the primary is not governed by the rights of Congress to regulate the times and manner of electing Senators. But the proposition is a suicidal one, since it at one and the same time retains in the State the only power it could possibly have, as delegated in the clause in question, and refuses to give effect to the regulating control which the clause confers on Congress as to that very power. * * *

[1] See *post*, p. 20.

But, putting these contradictions aside, let me test the contention from other and distinct points of view: (1) In last analysis the contention must rest upon the proposition that there is such absolute want of relation between the power of government to regulate the right of a citizen to seek a nomination for a public office and its authority to regulate the election after nomination, that a paramount government authority having the right to regulate the latter is without any power as to the former. The influence of who is nominated for elective office upon the result of the election to fill that office is so well known of all men that the proposition may be left to destroy itself by its own statement.

Moreover, the proposition, impliedly at least, excludes from view the fact that the powers conferred upon Congress by the Constitution carry with them the right "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." * * *

[After a discussion of the history of the 17th Amendment.] It is not disputable that originally instructions to representatives in State legislatures by party conventions or by other unofficial bodies, as to the persons to be elected as United States Senators, were resorted to as a means of indirectly controlling that subject, and thus, in a sense, restricting the constitutional provision as to the mode of electing Senators. The potentiality of instructions of that character to accomplish that result is amply shown by the development of our constitutional institutions as regards the electoral college, where it has come to pass that the unofficial nomination of party has rendered the discharge of its duties by the electoral college a mere matter of form. That in some measure, at least, a tendency to that result came about under the constitutional direction that Senators should be elected by the people, would appear to be doubtful. * * *

The large number of States which at this day have by law established Senatorial primaries shows the development of the movement which originated so long ago under the circumstances just stated. They serve to indicate the tenacity of the conviction that the relation of the primary to the election is so intimate that the influence of the former is largely determinative of the latter. * * * It has come to pass that in some cases, at least, the result of the primary has been in substance to render the subsequent election merely perfunctory. * * * It [is] impossible to say that the admitted power of Congress to control and regulate the election of Senators does not embrace, as appropriate to that power, the authority to regulate the primary held under State authority. * * *

[The early concern of the country over the powers of Congress as to elections] only served to emphasize the distinction between the State and Federal power, and affords no ground at this late day for saying that the reserved State power has absorbed and renders impossible of exercise the authority of Congress to regulate the Federal power concerning the election of United States Senators, submitted, to the extent provided, to the authority of the States, upon the express condition that such authority should be subordinate to and controlled by congressional regulation.

Can any other conclusion be upheld except upon the theory that the phantoms of attenuated and unfounded doubts concerning the meaning of the Constitution, which have long perished, may now be revived for the purpose of depriving Congress of the right to exert a power essential to its existence, and this in the face of the fact that the only basis for the doubts which arose in the beginning [the election of Senators by the State legislature] has been completely removed by the 17th Amendment? * * *

In view, then, of the plain text of the Constitution, of the power exerted under it from the beginning, of the action of Congress in its legislation, and of the Amendment to the Constitution, as well as of the legislative action of substantially the larger portion of the States, I can see no reason for now denying the power of Congress to regulate a subject which, from its very nature, inheres in and is concerned with the election of Senators of the United States, as provided by the Constitution.

Pitney, J., with whom concurred Brandeis and Clarke, JJ., also, while favoring a judgment of reversal for reasons to follow at a later stage, presented a dissenting opinion as to the constitutional right of Congress to control primary elections for the office of United States Senator, finding "no constitutional infirmity in the act of Congress that underlies the indictment." After referring to section 4 of Article I of the Constitution of the United States, upon the words of which alone he considers it erroneous to treat the question, and after quoting

sections 1–5 (as to the composition, manner of selection, and certain general powers of Congress), he proceeds:

It is contended that Congress has no power to regulate the amount of money that may be expended by a candidate to secure his being named in the primary election; that the power "to regulate the manner of holding elections," etc., relates solely to the general elections where Senators or Representatives are finally chosen. Why should "the manner of holding elections" be so narrowly construed? An election is the choosing of a person by vote to fill a public office. In the nature of things it is a complex process, involving some examination of the qualifications of those from whom the choice is to be made and of those by whom it is to be made; some opportunity for the electors to consider and canvass the claims of the eligibles; and some method of narrowing the choice by eliminating candidates until one finally secures a majority, or at least a plurality, of the votes. For the process of elimination, instead of tentative elections participated in by all the electors, nominations by parties or groups of citizens have obtained in the United States from an early period. Latterly the processes of nomination have been regulated by law in many of the States through the establishment of official primary elections. But, in the essential sense, a sense that fairly comports with the object and purpose of a Constitution such as ours, which deals in broad outline with matters of substance and is remarkable for succinct and pithy modes of expression, all of the various processes above indicated fall fairly within the definition of "the manner of holding elections." This is not giving to word "elections" a significance different from that which it bore when the Constitution was adopted, but is simply recognizing a content that of necessity always inhered in it. * * *

It is said that section 4 of Article I does not confer a general power to regulate elections, but only to regulate "the manner of holding" them. But this can mean nothing less than the entire mode of procedure—the essence, not merely the form, of conducting the elections. The only specific grant of power over the subject contained in the Constitution is contained in that section; and the power is conferred primarily upon the legislatures of the several States, but subject to revision and modification by Congress. If the preliminary processes of such an election are to be treated as something so separate from the final choice that they are not within the power of Congress under this provision, they are for the same reason not within the power of the States; and if there is no other grant of power they must perforce remain wholly unregulated. For if this section of the Constitution is to be strictly construed with respect to the power granted to Congress thereunder, it must be construed with equal strictness with respect to the power conferred upon the States; if the authority to regulate the "manner of holding elections" does not carry with it ex vi termini authority to regulate the preliminary election held for the purpose of proposing candidates, then the States can no more exercise authority over this than Congress can; much less an authority exclusive of that of Congress. For the election of Senators and Representatives in Congress is a Federal function; whatever the States do in the matter they do under authority derived from the Constitution of the United States. The reservation contained in the 10th Amendment cannot properly operate upon this subject in favor of the State governments; they could not reserve power over a matter that had no previous existence; hence, if the power was not delegated to the United States, it must be deemed to have been reserved to the people and would require a constitutional amendment to bring it into play, a deplorable result of strict construction.

But if I am wrong in this, and the power to regulate primary elections could be deemed to have been reserved by the States to the exclusion of Congress, the result would be to leave the general Government destitute of the means to insure its own preservation without governmental aid from the States, which they might either grant or withhold, according to their own will. This would render the United States something less than supreme in the exercise of its own appropriate powers. * * *

But why should the primary election (or nominating convention) and the final election be treated as things so separate and apart as not to be both included in section 4 of Article I? The former has no reason for existence, no function to perform, except as a preparation for the latter; and the latter has been found by experience in many States impossible of orderly and successful accomplishment without the former.

Why should this provision of the Constitution—so vital to the very structure of the government—be so narrowly construed? It is said primaries were unknown when the Constitution was adopted. So were the steam railway and the electric telegraph. But the authority of Congress to regulate commerce among the several States was extended over these instrumentalities, because it was recognized that the manner of conducting the commerce was not essential. * * *

[After the mentioning of a variety of regulations relating to elections of members of the House of Representatives.] In support of a narrow construction of the power of Congress to regulate "the manner of elections" of its membership, it is said that there is a check against corruption and kindred evils affecting the nominating procedure, in the authority of each House to judge of the election returns and qualifications of its own members; the suggestion being that if—to take a clear case—it appeared that one chosen to the Senate had secured his election through bribery and corruption at the nominating primary, he might be refused admittance. Obviously, this amounts to a concession that the primary and the definitive election, whose legal separateness is insisted upon, are essentially but parts of a single process; else how could the conduct of a candidate with reference to the primary have legitimate bearing upon the question of his election as Senator? But the suggestion involves a fundamental error of reasoning. The power to judge of the elections and qualifications of its members, inhering in each House by virtue of section 5 of Article I, is an important power, essential in our system to the proper organization of an elective body of representatives. But it is a power to *judge*, to determine upon reasonable consideration of pertinent matters of fact according to established principles and rules of law; not to pass an arbitrary edict of exclusion. And I am unable to see how, in right reason, it can be held that one of the Houses of Congress, in the just exercise of its power, may exclude an elected member for securing by bribery his nomination at the primary, if the regulation by law of his conduct at the primary is beyond the constitutional power of Congress itself. Moreover, the power of each House, even if it might rightfully be applied to exclude a member in the case suggested, is not an adequate check on bribery, corruption, and other irregularities in the primary elections. It can impose no penal consequences upon the offender; when affirmatively exercised it leaves the constituency for the time without proper representation; it may exclude one improperly elected, but furnishes no rule for the future by which the selection of a fit representative may be assured; and it is exerted at the will of but a single House, not by Congress as a law-making body.

But if I am wrong thus far—if the word "elections" in Article I, section 4, of the Constitution must be narrowly confined to the single and definitive step described as an election at the time that instrument was adopted—nevertheless it seems to me too clear for discussion that primary elections and nominating conventions are so closely related to the final election, and their proper regulation so essential to effective regulation of the latter, so vital to representative government, that power to regulate them is within the general authority of Congress * * *. This is the power preservative of all others and essential for adding vitality to the framework of the government. Among the primary powers to be carried into effect is the power to legislate through a Congress consisting of a Senate and House of Representatives chosen by the people—in short, the power to maintain a lawmaking body representative in its character. Another is the specific power to regulate the "manner of holding elections for Senators and Representatives" conferred by section 4 of the first Article; and if this does not in literal terms extend to nominating proceedings, intimately related to the election itself, it certainly does not, in terms or by implication, exclude Federal control of those proceedings. From a grant to the States of power to regulate the principal matter, expressly made subject to revision and alteration by Congress, it is impossible to imply a grant to the States of regulatory authority over accessory matters exclusive of the Congress * * *.

The passage of the Act under consideration amounts to a determination of the lawmaking body that the regulation of primary elections and nominating conventions is necessary if the Senate and House of Representatives are to be, in a full and proper sense, representative of the people * * *. To safeguard the final elections while leaving the proceedings for proposing candidates unregulated is to postpone regulation until it is comparatively futile. And Congress might well conclude that if the nominating procedure were to be left open to fraud, bribery, and corruption, or subject to the more insidious but (in the opinion of Congress) nevertheless harmful influences resulting from an unlimited expenditure

of money in paid propaganda and other purchased campaign activities, representative government would be endangered * * *.

[After the mentioning of illustrative laws for the carrying out the purposes of Congress.] It would be tragic if that provision of the Constitution which has proved the sure defense of every outpost of national power should fail to safeguard the very foundation of the citadel * * *.

I conclude that it is free from doubt that the Congress has power under the Constitution to regulate the conduct of primary conventions and nominating conventions held for choosing candidates to be voted for in general elections for Representatives and Senators in Congress, and that the provisions of the Act * * * in that behalf are valid.

The remaining decisions with regard to the kinds of elections to which the corrupt practices laws apply are concerned with relatively minor local matters. In one case it was held that the statute of an individual State may not apply to a local or special election which is not regarded as within its purview. This is the case of *State* v. *Norris* in 1930 (Tex. Civ. App. 33 S. W. (2) 850), involving *quo warranto* proceedings for the forfeiture of the right to a place on the official ballot of a candidate for judge by reason of his violation of certain provisions of the law. It was the view of the court that the law did not apply to an organization, here under the name of the "White Man's Union Association", supporting the respondent in the primary election, which was only of local or county and not of State-wide extent, and which was not required to hold a primary election.

The corrupt practices laws may or may not apply to municipal elections. In the case of *Dickenson* v. *Nelson* in North Dakota in 1937 (67 S. D. 162, 272 N. W. 297), in an election contest in respect to a city commissionership, it was declared that, in the legislative intent, the provisions of these laws with regard to expenditures and statements applied to such elections.

In two cases, both arising in the State of Kentucky in 1926 and 1934, respectively, *Ridings* v. *Jones* (213 Ky. 810, 281 S. W. 999) and *Hart* v. *Rose* (255 Ky. 576, 75 S. W. (2) 43), both involving contest proceedings with regard to elections for membership in school boards, it was declared that such elections are included within the purview of the corrupt practices law, whether or not the offices in question were in existence at the time of its enactment.

In the case of *Doughty* v. *Bryant* in Alabama in 1933 (226 Ala. 23, 145 So. 420), on the other hand, involving a bill of injunction respecting the election of an alderman to office, on the ground that he had failed to designate a committee to have charge of his election funds or to file a statement with regard thereto, it was said by the court that the law did not provide for elections for municipal offices, it also believing that the statute should be strictly construed in such matters.

In a somewhat similar case in Minnesota, *Anderson* v. *Firle,* in 1928 (174 Minn. 333, 219 N. W. 284), involving an election contest, it was held that the corrupt practices law under legislative intendment did not apply to township offices in townships with a population of less than 5,000, there being here no nominations, no official ballot, and no election formalities in general.

In a case in South Dakota in 1923, *Ransom County Farmers' Press* v. *Lisbon Free Press* (49 N. D. 1165, 194 N. W. 892), which was an action to annul an election with respect to the official newspaper of a certain county, the corrupt practices law was held not to apply,

as it might with respect to the election of persons to office. Said the court:

> It is difficult to see how these considerations can apply to an official newspaper. No restriction is placed upon the disposition of such newspapers.

A particular matter pronounced upon in several instances relates to the possible inclusion of local option elections in the provisions of the statutes referring to measures submitted to the people. In the case of *People* v. *Gansley* in Michigan in 1916 (191 Mich. 357, 158 N. W. 195, Ann. Cas. 1918 E 165), proceedings had been brought against a brewing corporation for the making of contributions in connection with a certain local option election, the statute forbidding all contributions by corporations to political committees for use in an election. The court held, *inter alia*, that a local option election was covered by the law within the intendment of the legislature, such election being a real "political measure" in respect to which a regular "political committee" might be organized. The reason for this view is thus given:

> In our opinion, the voting upon a proposed constitutional amendment or upon the question of local option, is as much an election as is the voting for candidates for office. The supposed abuse to be corrected is as apparent in one case as the other. The fundamental principle involved in construing a measure of this kind is to carry out the legislative intent. * * * When the word "political" is used as it is in this Act, even if held to qualify the words "principle or measure," it is a narrow construction to hold that it applies to one or more of the recognized political parties only. The word has a much broader meaning, and often refers to matters of public policy.

In a parellel case in Indiana in 1917, *State* v. *Fairbanks* (187 Ind. 648, 115 N. E. 769; see also *State* v. *Dausman*, 187 Ind. 730, 116 N. E. 306), where a brewing corporation had contributed the sum of $200 toward the defeat of a local option measure in a certain township election, the statute prohibiting contributions to political funds by corporations, a like view was taken. It was held that the act was to be construed so as to give full force and effect to all its parts, and to determine the legislative intent.

But in the case of *State* v. *Terre Haute Brewing Co.* (186 Ind. 248, 115 N. E. 772; see also *State* v. *McCrocklin*, 186 Ind. 277, 115 N. E. 929; *State* v. *Draper*, 187 Ind. 300, 116 N. E. 422), where the facts were much the same, but where prosecution was based on a section of the law prohibiting contributions by corporations for the promotion or defeat "of any political party or principle or other political purpose whatever," the court declared itself unable to regard local option elections within the intendment of the law:

> It seems evident to us from the language employed that the legislature had in mind practices only as applied to politics as generally understood, and that it was not the purpose of this section to extend the statute to cover every possible principle which might be submitted to the electors. To do so would require us to give the word "principle" qualified as it is, a meaning not indicated by the statutes.

CHAPTER II

DECISIONS RELATING TO LIMITATION OF EXPENDITURES FOR CAMPAIGN PURPOSES

Decisions relating to the limitation of expenditures for campaign purposes may be divided into two groups: those having to do with limitations set upon the total amount that may be expended for such purposes; and those enumerating the specific purposes for which expenditures may be made, and forbidding expenditures for other purposes. Under the former category the initial matter to be considered is whether the legislature has power to impose any limits upon the amount of money that may be expended in political campaigns, on the ground, as has been alleged, that thereby a free discussion of political questions is checked or prevented, which is not in consonance with the constitutional right of free speech, or that there is conflict with the provision of the Constitution guaranteeing free speech to all upon any subject, it thus not being possible in political campaigns to make full enunciation of political principles and programs or to carry adequate messages upon these things to the people, when restrictions are set upon funds that may be used for the purpose. The question came before the court in Idaho in 1910 in the case of *Adams* v. *Lansdon* (18 Ida. 483, 110 Pac. 280), where an original petition had been brought for the issuance of a writ to prohibit the secretary of state from sending to the auditors of the several counties of the State the names and addresses and other information regarding candidates, as required by the law, on the ground that the provision of this law forbidding the expenditure by a candidate of a sum in excess of 15 per cent of the amount of the salary of the office sought, except in regard to specified personal expenses, was in violation of the provision of the constitution of the State (Art. I, sec. 9) declaring that "every person may freely speak, write, and publish on all subjects, being responsible only for the abuse of that liberty." It was contended that in this limitation an undue restriction was placed upon the candidate, in that the amount which he might expend for traveling, advertising, and kindred objects in the interests of his candidacy was to this extent curtailed. The court, however, dismissed the objection, holding, among other things, that the provision of the law was not repugnant to that of the constitution, as there was really no attempt in the former to interfere with the right of free speech or writing.

A second decision in the matter is found in Wisconsin in the case of *State* v. *Kohler* in 1930 (200 Wis. 518, 228 N. W. 895, 69 A. L. R. 348), involving an action by the State against the Governor on the charge of illegal expenditures in his campaign for election. The court, in affirming that the legislature had the power to decide what amounts might be expended in political campaigns, declared that the corrupt practices law was not in violation of any constitutional rights, and that in particular it did not interfere with the right of free speech.

The law was not intended, the court said, to impose any restriction upon the public discussion of political questions; rather it was intended to bring about some degree of equalization among the several candidates for office. The court proceeded:

> Even after a person has announced or declared himself a candidate for public office, the statute makes no limitation upon the disbursements made by citizens who may, upon their own initiative and on their own behalf, support the candidacy of any person of their choosing. * * * The power of the legislature to declare that the doing of certain forbidden acts shall render an election void is the exercise of its power to prescribe what shall amount to an election, a power clearly committed to it by the Constitution.
>
> If the amount which may be expended by a candidate for purposes designated as proper by the statute is so small as to prevent a proper appeal to the electorate, the remedy lies with the legislature, and is in the field of political not judicial action. The balancing of the detriments and benefits is for the legislature, not for the courts. * * *
>
> If the Act operates as an unreasonable restraint upon the right of free speech, or upon the right of a citizen to address his fellow citizens upon questions of public policy, it must be because of the restrictions upon the candidate during the period of the election process. * * * It is urged that the sum of $4,000 is so inadequate for the purpose of conducting a primary election by a candidate and his personal campaign committee as to be an unreasonable restriction upon the right of the candidate to address effectively his fellow citizens upon behalf of the principles for which he stands. [The court considers the various item of cost that may go into a practical political campaign.] [1]

In an election to determine the site of a county seat, there is no limit upon the amount to be expended, when the only restrictions set down in the law apply, not to general elections, but to primary elections only. Such was the opinion, *inter alia*, of the court in *City of Tecumseh* v. *City of Shawnee* in Oklahoma in 1931 (148 Okla. 128, 297 Pac. 285). As to the argument that large expenditures of money by one side in an election really buys the election, the court says that this is a matter for the legislature to act upon, which so far seems not to have done so.

In another decision it is declared that when the law makes mention only of "public" elections, without the inclusion of primary elections, the limitations upon the amounts to be expended in the latter kind of election do not apply. The case of *McDonald* v. *Neuner* in California in 1935 (81 Cal. App. 248, 43 Pac. (2), 813) involved an action to recover for services in connection with a primary election campaign for the office of mayor of Los Angeles, where it was claimed that $4,229 was due, a sum in excess of what the law permitted (20 percent of the salary of the office in question). Said the court: "The primary election and the ensuing election are separate proceedings, involving separate expenditures for campaign purposes." If both were affected, it argued, he would not be able to make expenditures after the primary election, while other candidates might have gone to the limit.

Another matter for the attention of the courts is the determination of the exact limit of the expenditures permitted in a political campaign when the law refers to the "salary" of the office concerned, there sometimes also being extra means of compensation as "fees" as part of the emoluments thereof. Where decision has been rendered upon this point, it is to the effect that all such extra or incidental sources of income appurtenant to the office are to be included along with the

[1] On the comments of the courts as to excessive election disbursements, even though not themselves always for legal purposes, see *Taylor v. Neutzel* (220 Ky. 510, 295 S. W. 873, 1927).

salary to make the total prescribed by the law. In the case of *Spokely* v. *Haaven* in Minnesota in 1931 (183 Minn. 467, 237 N. W. 11), involving a contest with respect to the office of sheriff in one of the counties, it was declared by the court that by "salary" was meant both salary and fees. It said:

> We are of the opinion that the law intended to have its restriction on such disbursements, at least in a measure, in proportion to the gross official income. * * * Compensation was the controlling element. From a practical viewpoint and for the purpose of the particular law there could be no reason for making a distinction between "salary" and "fees," and we hold that the word "salary" used in the legislative enactment was used in its flexible, broad sense of compensation, including both "salary" and "fees."

A somewhat different situation is found in a case in Texas in 1926, *State* v. *Meharg* (Tex. Civ. App. 287 S. W. 670), which involved a suit by the State to enjoin the secretary of state from putting on the ballot for the office of State senator the name of a certain candidate. The action was based on the law which provided for two separate primary elections, and limited the total expenditures of a candidate for the office in question to $1,000, four-fifths to be expended before the first primary, and the remainder between the first and the second. Inasmuch, however, as there had been only two candidates for the office, and only one primary election had been necessary, the court held that in such a candidate was not limited to $800, but to $1,000.

The matter of the amount of total expenditures to be permitted in political campaigns has come up in two cases in California, both involving civil actions to recover an indebtedness incurred in connection therewith. In one case, *Hicks* v. *Frazer* in 1931 (1 Cal. Sup. 179, 1 Pac. (2) 1096), concerning the election of a county supervisor for which the expenditure of the sum of $1,000 (or 20 percent of the salary of $5,000) was authorized "by or on behalf of" a candidate or through himself or through another acting as his agent. The defendant was campaign manager for the candidate affected, and one bill was for $1,653. The court held the contract to be void, the sum sued for being in excess of the amount permitted by the law. It declared that the law was not thus to be evaded.

In *Mathewson* v. *Bean* in 1931 (114 Cal. App. 519, 300 Pac. 56), with regard to the same office, a group of persons who had worked for the candidate in his political campaign presented a bill in the sum of $4,301 for their services, their claim being that the law merely restricted the payment of the sum prescribed to any one person. The court had little patience with this view, declaring that the statute was concerned with the total sum expended, and that any other conception would reduce the law to an "absurdity."

Judicial attention may be equally firm in the face of the contention that political contributions, to be within the intendment of the law, must be for the personal gain of some individual concerned, and not with respect to some public measure, as the adoption of a proposed city charter. Such was the contention in *Commonwealth* v. *McCarthy* in Massachusetts in 1932 (281 Mass. 253, 183 N. E. 495, 85 A. L. R. 1141), the statute forbidding city officers who employed labor to receive political contributions therefrom, which in this instance were in the form of weekly membership dues of $1 in a club organized for the purpose (though later to some extent returned). In sustaining the indictment and conviction, the court stated:

The language of the statute which includes the collection of money not only for these specific purposes [as enumerated], but also "for any political purpose," does not permit such a narrow construction. The word "political" in its ordinary meaning is not limited to something pertaining to the actual management of a government by individuals for the time holding office thereunder. The essential significance in the proper and ordinary use of the word includes anything pertaining to the establishment of a form of government. * * * A purpose to influence the exercise of political rights is a political purpose. * * * If he [the officer in question] directly or indirectly collects or receives money in furtherance of that political purpose he is doing what the statute has forbidden and made a crime.[1]

In certain matters with regard to the limitations upon the amount allowed for campaign purposes, more or less favorable views may be entertained on the part of some courts. In one decision the concern of the court is with the interpretation of the provision of the statute restricting the total amount permitted to be expended for political purposes. In *Slusser* v. *Baker*, an Ohio case in 1917 (96 O. St. 606, 118 N. E. 1085; reversing 27 O. C. A. 197; see also 28 O. C. D. 409, 9 O. App. 117, 19 O. N. P. 573, 27 O. D. 169), the matter before the court was the determination which of the limitations possible to be imposed by the law applied whether the limitation was a fixed amount, or whether it was an amount dependent upon the number of votes cast at a preceding election. Contest proceedings had been brought to oust from office a successful candidate for the office of probate judge, it being found that he had expended in the primary election the sum of $746, which was later increased by $250. In the statute among the amounts specified for candidates for different offices was $500 for the office referred to. The statute also provided that the amount for candidates for any other offices in respect to which the vote at the last election for the office of Governor was 5,000 or less was $300. Then came the following provision: "If the total number of votes cast therein at such last preceding election be in excess of 5,000, the sum of $5 per each 100 in excess of such number may be added to the amount above specified. The question at issue was whether the provision quoted related to all the offices mentioned or only to those "other" offices; that is, whether the amount stated in respect to the office of probate judge could be augmented by the additional amount indicated. In reversing the decision of the trial court which found that the statute authorized an additional amount only in respect to the "other" offices, and not in respect to those enumerated, the court, without opinion, held that this interpretation was not proven, and hence that the successful candidate could not be ousted. It also held that, even if such were proved, there was no ground for his removal.

In a small number of decisions the question has arisen as to the effects upon election expenditures of an offer to accept a reduction of salary. In *Tipton* v. *Sands*, a Montana case in 1936 (103 Mont. 1, 60 Pac. (2) 662, 106 L. R. A. 474), involving an election contest with respect to the office of Chief Justice of the State, it appeared that the contestee had in his campaign addresses declared that he would not if elected accept the full salary of the office ($7,500), but a sum lower by $1,500, the balance representing the sum authorized for the reporting of decisions, with the work actually done by stenographers. After showing by an array of decisions that from common law on, the

[1] With respect to the limitation of political expenditures, see also *Epps* v. *Smith* (121 N. C. 157, 28 S. E. 359, 1897); *United States* v. *Grandwell* (243 U. S. 476, 37 Sup. Ct. 407, 61 L. Ed. 857, 1917; affirming 234 Fed. 446, 236 Fed. 993).

offer of a candidate for office to serve for less than the salary specified was nothing less than bribery, Ford, J., states:

> The underlying principle of these decisions is that when a candidate offers to discharge the duties of an elective office for less than the salary fixed by law, a salary which must be paid by taxation, he offers to reduce *pro tanto* the amount of taxes each individual taxpayer must pay, and thus indirectly makes an offer to the voters of pecuniary gain. The offer in effect is an offer of money for the electors' votes.

Notwithstanding, as it appeared that the candidate believed, and had reasonable ground for believing, being so told by lawyers whom he consulted, that the excess sum in the salary of the office in question was unconstitutional, he was justified in making the statement to the voters which he had done.

In a dissenting opinion by Morris, J., issue is taken with regard to the matter of "good faith" when a direct violation of the law is concerned; and such in the present instance is even questioned. In his words, "a plea of good faith here is not only specious to the last degree, but reprehensible under the facts and circumstances shown by the record." [1]

An indulgent view was likewise taken in a case in Kentucky in 1925, *Owsley* v. *Hill* (210 Ky. 285, 275 S. W. 797), involving contest proceedings in respect to the office of county attorney, where, *inter alia*, a candidate had offered to take $400 from his salary and devote it to the road fund. Extenuating circumstances were found because the salary of the office had not been a fixed one, and the candidate had simply run on a platform to reduce expenses, and not proposing to perform his duties at less than the legal compensation—the candidate in fact being regarded as merely restoring an old salary schedule.

In another decision, judicial rulings on the subject are strictly adhered to, and no deviation or excuse therefor is permitted. This is the case of *State* v. *Swanson* in Nebraska in 1939 (— Neb., —, 291 N. W. 481), involving mandamus proceedings to compel the acceptance of the filing of a candidate for the office of Representative in Congress and the due placing of his name on the ballot. The court took an adverse view on the ground that the candidate had agreed if elected to serve his term without pay "so long as the Federal budget remains unbalanced." In its opinion such action "constitutes a species of bribery which will invalidate an election." The plea of the candidate that he had acted in good faith, was not regarded as a good defense, and his claim that he had acted in ignorance of the law was not acceptable.

Finally, it is affirmed that an unexecuted intention to expend money unlawfully for primary election purposes will not deprive a successful candidate of his nomination, in the absence of affirmative evidence that he actually did so expend a part of it, as brought out in the case of *Damron* v. *Johnson* in Kentucky in 1921 (192 Ky. 523, 233 S. W. 910), involving contest proceedings with regard to the office of sheriff.

The next group of decisions to be considered has reference to the particular objects of the expenditures that are made in political campaigns. Here on the whole a rather liberal view is taken of the provisions of the corrupt practices statutes; and there appears to be an

[1] See also *Diehl* v. *Totten* (32 N. D. 131, 155 N. W. 74, Ann. Cas. 1918A, 884, 1915); *Prentiss* v. *Dittmar* (93 O. St. 314, 112 N. E. 1021, L. R. A. 1917 B, 191, 1916); *Kondert* v. *City of Madison* (39 S. D. 43, 162 N.W. 898, 106 A. L. R. 493, 1917); *State* v. *Paris* (36 Wis. 213, 17 Am. St. Rep. 485, 1874).

unwillingness to inflict severe penalties except for offenses directly in contravention of the law or offenses of gross or aggravated or markedly deliberate character. This attitude is in considerable part due to the recognition of the general rule of law that where an offense is made indictable the statute is to be strictly construed.

In the case of *Van Meter* v. *Burns* in Kentucky in 1917 (176 Ky. 153, 195 S. W. 470) the question related, among other things, to expenditures which were not expressly forbidden by law. Here there were involved contest proceedings with respect to candidates for the office of mayor and other offices in the city of Paducah who had made expenditures for the employment of persons to distribute campaign cards and for the conveyance of voters to the polls, the statute simply declaring that expenses for certain specified purposes were *not* illegal. Neither of the disbursements indicated was regarded by the court as wrongful, unless the compensation received were found to be excessive and disproportionate to the services rendered; much depended, in the view of the court, upon the reasonableness of the number of persons employed and the compensation paid them, and also upon the absence of bad faith. The view of the court is thus expressed with particular reference to the expenditure for conveyances:

> In our opinion, the sole purpose of the statute was to prevent bribery and corruption in elections. Hence the Act is not susceptible of the construction that it prohibits absolutely every expenditure except those specified during the time that a person is a candidate for office. The first part of Section 3, prohibiting the payment of money, or other thing of value, must be construed in the light of what follows, and when so construed is simply prohibition against the payment, promise, etc., of money, or other thing of value, to another in consideration of his vote or support. * * * We, therefore, see no impropriety whatever in a candidate's providing conveyances for the purpose of getting his friends to the polls. To this end he may use his own vehicles, or hire those of another, just so the latter's support is not a part of the consideration, or the compensation so large as to justify the inference that it was paid for the purpose of obtaining his support or influence.

In *Alter's Account*, a Pennsylvania case in 1912 (60 Pitts. 215, 39 Pa. C. C. 428, 21 D. R. 374), there were two items found in the account of an acting treasurer of a county committee which were alleged to be in contravention of the provisions of the law regarding the purposes of expenditures. The first was for the services of 15 watchers employed by the committee, which was acting for 15 candidates. Inasmuch as 2 watchers were permitted for each candidate the total number of watchers was held not to be too great. The second item was the sum of $50 paid to 1 man for the distribution of political literature. By this man 5 persons had been engaged to assist him at $5 each, without the knowledge or intention of the treasurer. As this amount was not unduly large for the purpose, and as there was no reason to believe that it was meant for ulterior purposes, it was not considered improper.

In a case in Pennsylvania in 1933, *In re Wilhelm* (111 Pa. Sup. 133, 169 Atl. 456), where there was involved a petition to certify the expense account of a candidate for membership in Congress, the court took a tolerant view toward the expenditures that had been made, especially for watchers when the total was not large. The candidate was the candidate of both the Republican and Democratic parties, and had expended a total of $334, besides a contribution of $1,000 to the governorship campaign. Said the court:

> This amount is neither shocking to the conscience nor, in the absence of any direct evidence, does it give rise to any inference of fraud or corruption.

In *Liebel's Case* in Pennsylvania in 1907 (33 Pa. C. C. 667, 16 D. R. 938), the expenditures of a successful candidate for the office of mayor of the city of Erie, for liquor and cigars were held to be unauthorized by the statute, and therefore illegal, despite the circumstance that expenditures for such purposes had often been looked upon as customary. In *Umbel's Election* in the same State in 1910 (57 Pitts. 343, 43 Pa. Sup. 598; affirmed 231 Pa. St. 94, 80 Atl. 541) a similar attitude was taken.[1]

In the case of *Luckenbach* v. *Lissner* in California in 1920 (44 Cal. App., 375, 186 Pac., 629), where in a civil action to recover an indebtedness, it appeared that a bill for the rent of premises used by a political organization ("Johnson for Senator Club") was not presented within 10 days after election, as prescribed by the law with regard to such matters, to entitle one to recovery, it was for the jury to decide whether the rental was made in an individual or in a political capacity. If, said the court, the rental was definitely on a personal basis, even though the premises were used for actual political purposes, the corrupt practices law was not violated.

Other decisions are of like order, as in *Coward* v. *Williams* in Texas in 1928 (Tex. Civ. App. 4 S. W. (2), 249; see also *Ramsay* v. *Wilhelm*, Tex. Civ. App., 52 S. W. (2), 757, 1932), where in contest proceedings in respect to bonds for road building, the statute as to the conveyance of voters to the polls was held not to forbid the taking of friends and neighbors thereto; *Atkinson* v. *Roosevelt County* in Montana in 1924 (71 Mont. 165, 227 Pac. 811), where in injunction proceedings against a board of county commissioners to prevent the removal of a county seat, it was held, *inter alia*, that the furnishing of gasoline, oil, and automobile equipment free to owners of cars did not come within the prohibition of the law as to the conveyance of voters to polls, being without the intent of buying votes; *Bargo* v. *Tedders* in Kentucky in 1934 (254 Ky. 341, 71 S. W. (2), 660), where in an election contest with respect to the office of county clerk, it was held, *inter alia*, that the chartering of a theater and the putting on of a free show, which were included in the later filed expense account, was not in violation of the law; *Asher* v. *Broughton* in Kentucky in 1929 (231 Ky. 165, 21 S. W. (2), 260), where in an election contest in respect to the office of sheriff of a county, contributions to party committees for political headquarters, charitable organizations, schools, sports, etc., were held not to be prohibited expenditures; *State* v. *Price* in Ohio in 1928 (30 O. App. 218, 164 N. E. 765; see also 119 O. St. 558, 165 N. E. 44, 1929), where in *quo warranto* proceedings to oust one from membership in the board of trustees of public affairs of a certain village, promises to provide local welfare improvements were regarded as mere "expressions of policy," and not in contravention of the law; *Fordham* v. *Stearns* in Oregon in 1927 (122 Oreg. 311, 258 Pac. 822), where in an election contest in respect to a school directorship, announcements as to policies in retaining school teachers was held as not in violation of the law. (See also *City of Tecumseh* v. *City of Shawnee*, 148 Okla. 128, 297 Pac. 285, 1931.)

There are not many decisions in which there is severe reprimand for the expenditure of campaign funds for objects not permitted by

[1] See, however, *In re Candidate Price's Expense Account* (33 Pa. C. C. 244, 16 D. R. 326, 10 Del. 233, 1907); *Kinney's Election Expenses* (39 Pa. Sup. 195, 1908).

the law. Most cases of this order deal with direct bribery or other like offenses.[1]

The remaining decisions in connection with the limitation of expenditures largely turn upon the intent to which they are made with the candidate's knowledge or consent. They might thus be included among the decisions concerned with the general regulation of receipts and disbursements; but as they deal more or less directly with the restrictions placed upon expenditures, they may perhaps best be considered here. In this particular the courts are inclined to regard only those expenditures as under the purview of the law, so far as candidates are concerned, which are made in the circumstances indicated, and to regard candidates as not generally answerable for expenditures otherwise incurred. They do this mainly out of consideration for the candidate, who else could be made the victim of designing and unscrupulous enemies, and whose defeat thereby could very easily be compassed. Such at least appears to be the way of reasoning in the majority of cases having to do with the matter, the smaller number considering it from a stricter standpoint.

A leading case presenting the liberal view of the construction of the provisions is that of *State* v. *Bland*, which came up in Missouri in 1898 (144 Mo. 534, 46 S. W. 440, 41 L. R. A. 297). Original proceedings had been brought by information of the attorney general of the State on the application of a citizen for the ousting from a judicial office of a successful candidate, it being alleged, among other things, that he had failed to file a statement of moneys received and expended by himself and his friends, and had disbursed a greater sum than the law permitted, namely, $1732. In the view of the court, inasmuch as the allegations did not state that this excess was expended with the knowledge of the candidate, there was no cause for action; he was not to be regarded as responsible for it. The reason for its ruling is thus given:

> It will be observed that it is not charged that Bland himself or any other person for him with his knowledge or consent, spent more money than the law permitted. The allegation is that what he spent and what his friends spent, partly *with* his knowledge and partly *without* his knowledge, exceeded the legal limit. It needs no deep discernment to see that if the expenditures of money for a candidate without his knowledge or consent would work a forfeiture of his office, an officer might be ousted for acts done by others beyond his control and without his knowledge. Under such a construction of the statute, no man however honest or law-abiding, would ever have a safe tenure of office, for if he can be ousted for the acts of others done without his knowledge, then in order to accomplish this purpose, it would only be necessary for some evilminded or designing person to spend enough money, added to the amount the officer had legitimately spent, to exceed the limit, and the innocent officer would lose the office to which the people had elected him.

A somewhat similar decision is that of *Bechtel's Election Expenses*, a Pennsylvania case in 1909 (39 Pa. Sup. 292; see also 18 D. R. 167). Here in proceedings for the accounting of the disbursements of a candidate for judicial office, as required by the law, the court declined to admit evidence that persons to whom the candidate entrusted money for campaign purposes spent it illegally when there was no offer to

[1] In *Prewitt* v. *Caudill* in Kentucky in 1933 (250 Ky. 698, 63 S. W. (2), 954), involving an election contest in regard to the office of circuit judge, where, among other things, expenditures for advertising and conveyances to the polls were questioned the court said: "The intent of the law will not permit the employment of such a number of persons or the payment of sums disproportionate to the services rendered as to justify the conviction that the employment was not in good faith or the pretended compensation paid merely for the purpose of securing their votes or influence in the election." See also *Howard* v. *Whittaker* (250 Ky. 836, 64 S. W. (2) 173, 1933). On cases prior to the enactment of the present corrupt practices laws, see, e. g., *Commonwealth* v. *Walter* (86 Pa. St. 15, 1877); *Williams* v. *Commonwealth* (91 Pa. St. 493, 9 W. N. C. 113, 1879); *Jackson* v. *Walker* (5 Hill, N. Y., 27, 1843, 7 Hill 387, 1844); *Hurley* v. *Van Wagner* (28 Barb., N. Y., 109, 1858).

show that this was done with the knowledge and consent of the candidate. The court was prompted by the same reasons as those in the Missouri case, namely, the protection of the candidate from the operations of designing parties. It viewed the act as of remedial nature, and to be construed liberally. It declared:

> To sustain evidence of that kind might put a candidate in a very serious position, if some party would profess friendship for him and pretend to act in good faith as his representative in assisting him in his canvass, and at the same time might be betraying him by committing illegal acts.

In a Minnesota case in 1912, *Harrison* v. *Nimocks* (119 Minn. 535, 137 N. W. 972), involving contest proceedings in respect to the nomination of a candidate for the State legislature, the court likewise adopted the view that such candidate was not to be punished by the loss of the office to which he was elected, because of the alleged greater expenditure of money than that allowed by the law, when the evidence failed to show that the amount was expended with his authority, consent, or knowledge.

In the case of *Mariette* v. *Murray* in Minnesota in 1933 (185 Minn. 630, 242 N. W. 331), involving contest proceedings with respect to the office of county commissioner, it appeared that a voluntary committee, composed mostly of county employees, had expended for the nomination and election of the successful candidate the sum of $3,048, though the candidate was limited to $1,333 (one-third of $4,000, the salary of the office in question). This was especially for the publication and circulation of political literature, of which the candidate was himself ignorant, though he had furnished some of the information used. It further appeared that the candidate contributed no money, had no direction of its employment, and had no knowledge of particular disbursements. The court, *inter alia*, pointed out the several committees that might legally operate in a political campaign: a personal committee, a party committee, and a voluntary "political committee." The last named committee could collect and disburse money, the amount of which it could expend not being definitely limited in the law. Referring to what it might do, the court said:

> Its activities must be confined to lawful purposes, and be carried out in a lawful manner. The law places no definite limitation upon the amount of money which such a committee may raise, collect, and expend.

In the present case the court held that evidence was insufficient to show that this committee could be regarded as that of the candidate, as it worked independently of him, and was so intended; its expenditures were not chargeable to him.

A case of not greatly different tenor is that of *Manning* v. *Lewis* in Kentucky in 1923 (200 Ky. 271, 255 S. W. 513), involving contest proceedings in respect to a primary election for the office of circuit judge, where greater amounts had been expended than were permitted by the law, but by the friends of the candidate concerned, it being very doubtful if the candidate knew of them. Commenting upon the matter, the court said:

> A candidate at whose door the evidence brings no intentional violation should not be deprived of his nomination because, forsooth, some loyal or enthusiastic friend sees proper to, and does, use money without his knowledge in bringing before the voters the efficiency of the espoused candidate to office and the manner in which he proposes to perform its duties if elected.

In one case in Kentucky in 1937, *Dyche* v. *Scoville* (270 Ky. 196, 109 S. W. (2) 581), involving contest proceedings in respect to a primary election for the office of county jailer, it was decided that, apart from bona fide church contributions not being illegal, expenditures not proved to be with the knowledge and consent of the candidate concerned could not be "imputed" to him; to be within the intendment of the corrupt-practices law, they must have been with his actual knowledge.

In another case in the same State in 1937, *Conway* v. *Arnold* (270 Ky. 128, 109 S. W. (2) 399), involving contest proceedings in respect to a nomination for the office of county clerk, it was declared that, even while expenditures by a candidate herself or by her husband or father for the hire of automobiles and for the distribution of campaign literature were not within the prohibition of the law, any such expenditures could not be charged to the candidate without her authorization and knowledge thereof.

In a somewhat similar case in the same State in 1919, *Hardin* v. *Horn* (184 Ky. 548, 212 S. W. 573; with it being decided on the same facts *Fletcher* v. *Johnson* and *Dempsey* v. *Cassady*), where contest proceedings had been brought in part on the ground of illegal expenditures in connection with an election for the office of a county sheriff in violation of the corrupt practices law, it was held that such charges were indefinite, and that there was no evidence of illegal or improper expenditures, the one expenditure which admitted of doubt not being proved to have been by the candidate or on his behalf or with his knowledge.

In still another case in this State, *Gallagher* v. *Campbell*, in 1937 (267 Ky. 370, 102 S. W. (2) 340), involving an election contest in respect to a city commissionership because of failure to include in expense accounts contributions from officers of a bank, it was held that the candidate in question was not to be regarded as responsible in the lack of proof that the relationship of principal and agent existed or that the bank was acting as an authorized campaign committee.

In another decision in Minnesota, in 1919, *Rees* v. *Nash* (142 Minn. 260, 171 N. W. 781), where contest proceedings had been instituted with respect to the election of a successful candidate for the office of county attorney, it was charged that a sum greater than that permitted for his office ($1,667) had been expended by him and his personal campaign committee, and that a proper statement with regard thereto had not been filed, all in violation of the statute. Here it appeared that the contestee's brother had organized a volunteer committee which collected money and otherwise rendered assistance, but that the candidate did not know the personnel of this committee, nor the amounts expended or their sources, nor the general work done. The candidate had expended the sum of $396, which sum was duly reported. He had also obligated himself with regard to the sum of $756 expended by the committee, of which he had learned only from his brother after its incurrence, and which he included in his own statement. There had possibly been other expenditures by the committee, but not with the knowledge of the candidate. In these circumstances the court held that there was no occasion for his removal from office.

In connection with the question of how far the liability of a candidate extends with respect to excessive or otherwise illegal expenditures made by his friends or supporters, but not necessarily with his con-

nivance or approval or procurement, we have also the opinion of certain Justices of the United States Supreme Court, in the case of *Newberry* v. *United States* (256 U. S. 232, 41 Sup. Ct. 469, 65 L. Ed. 913), a case already examined. Here, though judgment was for the defendant because of the view of the majority of the Court that the Federal corrupt practices act relating to primary elections for the office of United States Senator was unconstitutional, the consensus of opinion was that the candidate's responsibility for expenditures of his friends, greater in amount than was allowed by the law, was limited. The indictment charged that, together with 134 other persons, the defendant, while a candidate for nomination and election to the office of United States Senator, had conspired to violate the Federal corrupt practices act which forbade the giving, contributing, expending, using, or promising, or the causing to be given, contributed, expended, used, or promised, of a sum greater than was permitted by the laws of the State in which the candidate resided, in this case $3,750, and in no event of a sum in excess of $10,000 in connection with the office in question; the other persons referred to also being charged with having aided, counseled, induced, and procured the commission of the wrongful act by the defendant candidate. The instruction given to the jury by the trial court, which was excepted to and assigned for error, was as follows:

> The words "give, contribute, expend, or use", as employed in this statute, have their usual and ordinary significance, and mean furnish, pay out, disburse, employ, or make use of. The term "to cause to be expended, or used," as it is employed in this statute, means to occasion, to effect, to bring about, to produce the expenditure and use of the money. The prohibition contained in this statute against the expenditure and use of money by the candidate is not limited or confined to the expenditure and use of his own money. The prohibition is directed against the use and expenditure of excessive sums of money by the candidate from whatever source or from whomsoever those moneys may be derived.
>
> The phrase which constitutes the prohibition against the candidate "causing to be given, contributed, expended, or used" excessive sums of money, is not limited and not confined to expenditures and use of money made directly and personally by himself. The prohibition extends to the expenditure and use of excessive sums of money in which the candidate actively participates, or assists, or advises, or directs, or induces, or procures. The prohibition extends not only to the expenditure and use of excessive sums of money by the candidate directly and personally, but to such use and expenditure through his agency, or procurement, or assistance. To constitute a violation of this statute, knowledge of the expenditure and use of excessive sums of money on the part of the candidate is not sufficient; neither is it sufficient to constitute a violation of this statute that the candidate merely acquiesces in such expenditure and use. But it is sufficient to constitute a violation of this statute if the candidate actively participates in doing the things which occasion the expenditures and use of money, and so actively participates with knowledge that the money is being expended and used.
>
> To apply these rules in this case: If you are satisfied from the evidence that the defendant, Truman H. Newberry, at or about the time that he became a candidate for United States Senator, was informed and knew that his campaign for the nomination and election would require the expenditure and use of more money than is permitted by law, and with such knowledge became a candidate, and thereafter by advice, by conduct, by his acts, by his direction, by his counsel, or by his procurement, he actively participated and took part in the expenditure and use of an excessive sum of money, of an unlawful sum of money, you will be warranted in finding that he did violate this statute known as the Corrupt Practices Act.

The majority of the court, speaking through McReynolds, J., while holding for the defendant on other grounds as well, thus expressed itself with respect to the matter:

> Under the construction of the Act urged by the Government and adopted by the court below, it is not necessary that the inhibited sum be paid, promised, or

expended by the candidate himself, or be devoted to any secret or immoral purpose. For example, its open and avowed contribution and use by supporters upon suggestion by him, or with his approval and cooperation, in order to promote public discussion and debate touching vital questions, or to pay necessary expenses of speakers, etc., is enough. And upon such interpretation the conviction below was asked and obtained.

The minority of the court, while dissenting from the majority in respect to the constitutionality of the Federal corrupt practices law, were in agreement with the majority in the judgment of reversal of the judgment of the lower court because of the nature of the instructions given by it. Characterizing this instruction as a "gross misapprehension and grievous misapplication" of the statute, White, C. J., states his opinion as follows:

Whether the instructions [contained in the first and second paragraphs given above], if unexplained, were, in view of the ambiguity lurking in many of the expressions used therein, prejudicially erroneous, I do not think necessary to consider, since I see no escape from the conclusion that the instruction [contained in the last paragraph of the instructions] which made application of the view of the statute stated in the previous passages * * *, was in clear conflict with the text of the statute, and was necessarily of a seriously prejudicial nature, since in substance it announced the doctrine that, under the statute, although a candidate for the office of Senator might not have contributed a cent to the campaign, or caused others to do so, he nevertheless was guilty if he became a candidate or continued as such after acquiring knowledge that more than $3,750 had been contributed and was being expended in the campaign. The error in the instruction plainly resulted from a failure to distinguish between the subject with which the statute dealt—contributions and expenditures made or caused to be made by the candidate—and campaign contributions and expenditures not so made or caused to be made, and therefore not within the statute.

There can be no doubt when the limitations as to expenditures which the statute imposed are considered in the light of its context and its genesis, that its prohibitions on that subject were intended not to restrict the right of the citizen to contribute to a campaign, but to prohibit the candidate from contributing and expending, or causing to be contributed and expended, to secure his nomination and election, a larger amount than the sum limited as provided in the statute. To treat the candidate, as did the charge of the court, as being necessarily the cause, without more, of the contribution of the citizen to the campaign, was therefore to confound things which were wholly different, to the frustration of the very object and purpose of the statute. To illustrate: Under the instruction given, in every case where, to the knowledge of the candidate, a sum in excess of the amount limited by the statute was contributed by citizens to the campaign, the candidate, if he failed to withdraw, would be subject to criminal prosecution and punishment. So, also, contributions by citizens to the expenses of the campaign, if only knowledge could be brought home to them that the aggregate of such contributions would exceed the limit of the statute, would bring them, as illustrated by this case, within the conspiracy statute, and accordingly subject to prosecution. Under this view the greater the public service, and the higher the character of the candidate, giving rise to a correspondingly complete and self-sacrificing support by the electorate to his candidacy, the more inevitably would criminality and infamous punishment result both to the candidate and to the citizen who contributed.

The opinion of Pitney, J., in which Brandeis and Clarke, JJ., concurred, is as follows:

In my opinion, the trial court did not err * * * in instructing the jury that the prohibition of the statute against the expenditure and use of money by a candidate beyond the specified limit is not confined to his own money, but extends to the expenditure or use of excessive sums of money by him, from whatever source and from whomsoever derived; nor in instructing them that, in order to warrant a verdict of guilty from an indictment for conspiracy, it was not necessary for the Government to show that defendants knew that some statute forbade the acts they were contemplating, but only to show an agreement to do acts constituting a violation of the statute; their knowledge of the law being presumed.

I find prejudicial error, however, in that part of the charge which assumed to define the extent to which a candidate must participate in expenditures beyond

the amount limited in order that he may be held to have violated the prohibition—an instruction vitally important because it was largely upon overt acts supposed to have been done in carrying out the alleged conspiracy that the Government relied to prove the making of the conspiracy and its character, and because, unless the purposes of the defendant involved a violation of the Corrupt Practices Act, they were not guilty of a conspiracy to commit an "offense against the United States," within the meaning of [the statute]. [Quotations of instructions of trial court.]

However this may be regarded when considered in the abstract, the difficulty with it, when viewed in connection with the evidence in the case to which the jury was called upon to apply it, is that it permitted and perhaps encouraged the jury to find the defendants guilty of a conspiracy to violate the Corrupt Practices Act if they merely contemplated a campaign requiring the expenditure of money beyond the statutory limit, even though Mr. Newberry, the candidate, had not, and it was not contemplated that he should have, any part in causing or procuring such expenditure beyond his mere standing voluntarily as a candidate and participating in the campaign with knowledge that moneys contributed and expended by others without his participation were to be expended.

The language of the Corrupt Practices Act * * * is: "No candidate * * * shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised," etc. A reading of the entire act makes it plain that Congress did not intend to limit the spontaneous contributions of money by others than a candidate, nor expenditures of such money except as he should participate therein. Of course, it does not mean that he must be alone in expending or causing to be expended the excessive sums of money; if he does it through an agent or agents, or through associates who stand in the position of agents, no doubt he is guilty; "qui facit per alium facit per se"; but unless he is an offender as a principal, there is no offense. * * * Clearly [the provision of the Criminal Code] makes anyone who abets a candidate in expending or causing to be expended excessive sums a principal offender; but it cannot change the definition of the offense itself as contained in the Corrupt Practices Act, so as to make a candidate a principal offender unless he directly commits the offense denounced. Spontaneous expenditures by others being without the scope of the prohibition, neither he nor anybody else can be held criminally responsible for merely abetting such expenditures.

It follows that one's entry upon a candidacy for nomination and election as a Senator with knowledge that such candidacy will come to nought unless supported by expenditure of money beyond the specified limit, is not within the inhibition of the act unless it is contemplated that the candidate shall have a part in procuring the excessive expenditures beyond the effect of his mere candidacy in evoking spontaneous contributions and expenditures by his supporters; and that his remaining in the field and participating in the ordinary activities of the campaign with knowledge that such activities furnish in a general sense the "occasion" for the expenditure is not to be regarded as a "causing" by the candidate of such expenditure within the meaning of the statute.

The state of the evidence made it important that, in connection with that portion of the charge above quoted, the jury should be cautioned that unless it was a part of defendants' plan that Mr. Newberry should actually participate in giving, contributing, expending, using, or promising, or causing to be given, contributed, expended, used, or promised, moneys in excess of the limited amount—either himself or through others as his agents—his mere participation in the activities of the campaign, even with knowledge that moneys spontaneously contributed and expended by others, without his agency, procurement, or assistance, were to be or were being expended, would not of itself amount to his causing such excessive expenditure. The effect of the instruction that was given may well have been to convey to the jury the view that Mr. Newberry's conduct in becoming and remaining a candidate with knowledge that spontaneous contributions and expenditures of money by his supporters would exceed the statutory limit, and his active participation in the campaign, were necessarily equivalent to an active participation by him in causing the expenditure and use of an excessive sum of money, and that a combination among defendants having for its object Mr. Newberry's participation in a campaign where money in excess of the prescribed limit was to be expended, even without his participation in the contribution or expenditure of such money, amounted to a conspiracy on their part to commit an offense against the act.

In certain cases a stern construction is placed upon the intendment of the law in the matter of a candidate's responsibility for expenditures

in his behalf. In one it is held to be an essential purpose of the statute to discover the objects of all expenditures regardless of the assent of the candidate to be benefited. In another the main question is held to be whether the total expenditures exceed the limit set by the law, no matter by whom they are made. The first case is that of *Umbel's Election* in Pennsylvania in 1911 (57 Pitts. 343, 43 Pa. Sup. 598; affirmed 231 Pa. St. 94, 80 Atl. 541; see also 19 D. R. 190, 57 Pa. L. J. 313). In proceedings for the auditing of the accounts of a candidate for judicial office, as authorized by the law, the petitioners sought to find from a witness how he had expended the sum of $1,050 given to him. To this there was objection on the ground that even if such expenditure were proved to be unlawful, there was no offer to show that it was made with the knowledge and consent of the candidate. The court decided that the question was a quite proper one, and might be asked without such preliminary proof. It held that it was the purpose of the audit to bring the fact out, and that the matter need not be expressly mentioned in the petition. It declared:

> To hold that these petitioners could only inquire of the agents as to the expenditures of the money placed in their hands which the petitioners were able to prove were made for illegal purposes, would be to put a contradiction on the act which would defeat one of its plain and salutary objects.

The other case is that of *State* v. *Good* in Ohio in 1898 (15 O. C. C. 386, 8 O. C. D. 401), which involved an action to oust the mayor of the city of Springfield from office, and to declare his election thereto void and the office vacant. It was found that the defendant while a candidate had not himself exceeded the limit imposed by the law but that his political committee had done so, there having been disbursed the sum of $283, whereas the legal limit was $139. In deciding against the defendant, the court held that whether or not a campaign committee were the agent of a candidate was merely a question of fact, the evidence in this case tending to prove that it was really chosen by the candidate. For the purposes of the act, according to the court, it might be regarded as a personal committee, although the only connection of the candidate with it was in the payment of an assessment. By whom the actual expenditures were made was immaterial in the eyes of the law, provided they exceeded the legal limit, this being the crux of the entire matter. Said the court:

> It seems to the court that while a candidate may pay in an assessment to the committee of his party and have nothing further to do with the management and conduct of the campaign, the committee would not be, or the members of the committee would not be, his agents in the management of his campaign for that office. But the question of agency is a question of fact, and the candidate for the office can make the regular chosen committee of his party his agents in the management of his campaign for that office. * * * The Court holds that it makes no difference, so far as the law is concerned, whether Good paid the money directly and out of his own pocket, or whether it was paid for him and for his benefit by his friends and agents.

In the already noted case of *United States* v. *Burroughs* (65 Fed. (2) 796, 62 App. D. C. 163; see also 290 U. S. 534, 54 Sup. Ct. 287, 78 L. Ed. 484), involving criminal proceedings for the failure on the part of the treasurer of a political committee to file a statement of receipts and expenditures as required by the law, it was held that such treasurer was presumed to know of contributions that were made, and to have acted with such knowledge, and that his failure to file a report under such circumstances was "willful."

CHAPTER III

DECISIONS RELATING TO REGULATION OF CONTRIBUTIONS AND DISBURSEMENTS

Decisions of the courts affecting the regulation of campaign contributions and disbursements are largely concerned with the powers and duties of committees, treasurers, and political agents. There are in fact in not a few instances no sharply dividing lines between cases having reference to such matters and cases having reference to the limitation of campaign contributions, the two often being decided upon the same points of law and of fact.

With respect to these regulations a rather lenient attitude seems on the whole to be taken. In a Pennsylvania case, one already noticed, namely, *Alter's Account* (60 Pitts. 215, 39 Pa. C. C. 428, 21 D. R. 374), an opinion is expressed regarding the operations of a *de facto* treasurer, in the absence of a regular one, as to the expenditures of a candidate not passing directly into the hands of the persons set down as the recipients in the statement of expenses. Here it was found that the persons for the auditing of whose accounts a demand had been made, was at the beginning appointed chairman of a certain county committee, but that, as the regular treasurer was unable to serve on this committee, the former agreed to assume the duties of the latter. With the statement rendered by him as acting treasurer, the court expressed its satisfaction. After pointing out that the language of the statute referred to a "person acting as such treasurer," it stated:

> The object of the statute is to provide that every committee shall have a treasurer, and only one treasurer, and that all money shall pass through his hands, the purpose being to enable the public to ascertain by the account of such person what moneys were expended by the committee. How the treasurer is appointed, provided he acts, and only one treasurer acts, is no concern of the public.

As to the expenditure of money for watchers and for other purposes which was not paid directly to the persons named in the account, the court has this to say:

> The act does not require a candidate or treasurer to pay the money lawfully expended by him under the provisions of the act with his own hand to the person receiving it. * * * The person to whom the money is paid is not the agent who carries it from the treasurer to the person receiving it, and there is nothing in the act which requires that the names of such persons should be set out. What is required is that the account shall show the person who received the money to perform a certain service, and whether the money was sent to him by a check, or paid cash, or carried by messenger, or paid by an agent of the treasurer or candidate, can make no difference. We are of opinion, therefore, that this manner of account is strictly correct, and that which is called for by the act.[1]

[1] In the opinion of the attorney general of Pennsylvania, committees are recognized only in connection with a general election; in primary elections a candidate is alone responsible for moneys received and expended; if such a candidate appoints a committee or treasurer, he must state the amount given to them. *Primary Election Accounts* (35 Pa. C. C. 34, 18 D. R. 189, 1908).

A similar attitude has been shown with respect to whether certain persons seeking to assist in the election of a candidate may be regarded as his campaign committee in the absence of their express designation as such. In the case of *Hays* v. *Combs* in Kentucky in 1917 (177 Ky. 355, 197 S. W. 788), it appeared that the board of election commissioners of one county had refused to issue a certificate of nomination to a successful candidate in a primary election for the office of county sheriff on the ground that his campaign committee had neglected to file a statement of its receipts and expenditures as required by law. The question before the court was held to be one of fact; namely, whether certain persons who had made illegal expenditures in behalf of such candidate constituted a campaign committee within the meaning of the statute. The candidate testified that he had appointed no such committee; and the weight of evidence was considered as supporting his contention. Respecting the persons who were charged with being the campaign committee of the candidate, the court declared that they—

> Did as individuals support Combs in his race, and did as individuals furnish money for use in his campaign, and did as individuals on the day of the election and before resort to corrupt practices to secure his nomination, but the doing of these acts and things by these men did not in themselves constitute them his campaign managers, or put them in charge of his campaign, or make it necessary that they should file the statement required by the Act to be filed by campaign committees or managers. The Act does not contemplate that every individual who supports a candidate, or who contributes to his campaign, or who exerts himself to secure his success, should file a statement of his acts or doings. Such a requirement would be a foolish thing.

In another case a tolerant attitude is taken with respect to the failure to comply literally with the provisions of the law when such failure is not inspired by bad faith and the results from it are inconsequential. This is the case of *Harrison* v. *Nimocks* (119 Minn. 535, 137 N. W. 972)—a case already referred to—involving the provisions of the statute which required that the names of the members of all committees should be duly filed. It appeared that the defendant while a candidate had chosen his committee, but that inasmuch as the committee had never in fact been organized, and had had no funds, he had neglected to report the names of its members. No evidence of any kind was adduced to show that money had been expended by the committee. In these circumstances it was held that there had been no violation of the intent of the law.

A similar ruling has been made with regard to an honest mistake relating to the position of the recipient of a contribution. In *Skewes* v. *Bliss* in Utah in 1921 (58 Utah 51, 196 Pac. 850), contest proceedings had been instituted to oust from office the successful candidate for the sheriffship of one county, in which proceedings it was found that this candidate had contributed the sum of $10 to an election judge for political purposes, the statute allowing contributions only under the candidate's personal direction or through a regular committee. It was held by the court that the contribution was really made in good faith, the candidate thinking that he was making his contribution to a real committee chairman, and the amount being credited to the committee. The court was in some measure influenced to its decision by the fact that severe penalties were affixed to the violation of the law.

According to a ruling in a Pennsylvania case in 1912, *Conner's Account* (60 Pitts. 385), where the law does not provide for a treasurer for a candidate, but a candidate pays money to a treasurer, who files an account, which is adopted by the candidate and made a part of his own account, such treasurer is to be considered the agent of the candidate, he being empowered to have agents to act for him. Persons acting in this capacity need not be mentioned in the candidate's reports if payments are actually made as set forth. (It was also held in this case that the purchase of admission tickets to picnics or similar affairs, unless for the personal use of the candidate or his employees, and actually so used, is not within the authorization of the law. In such circumstances the candidate should state the number of tickets purchased, from what persons they were purchased, and to what use they were put.) When a candidate claims credit in his account for money expended, he should set down the names of all persons to whom it was paid, and for what purposes.[1]

With regard, on the other hand, to the responsibility of a candidate for funds entrusted to a personal agent, a rather strict view is adopted, as expressed in one decision, that of *Bechtel's Election Expenses* (39 Pa Sup. Ct. 292; see also 18 D. R. 167), noted earlier. Here a candidate had given the sum of $700 to a party not a member of a committee, which was to be expended as directed. This the court held to be an expenditure in reality by the candidate, for which he was rightly to be regarded as answerable.[2]

Again, the court undertakes to determine to what extent the general provisions of the corrupt practices laws apply to the members of political committees. In *Usilton* v. *Bramble*, a Maryland decision in 1911 (117 Md. 10, 82 Atl. 661, Ann. Cas. 1913 E 473), there was involved, among other things, the election of two members of a State central committee. The question at issue was whether these members were to be included in the provisions of the corrupt practices act, requiring the filing of statements of receipts and expenditures. The court found in the statute a distinction between candidates for public office and candidates for membership in a managing body of a political party; and concluded that only the former were really the "candidates for public office" mentioned so frequently in the statute, an especial reason for this view being the fact that the Act speaks of certain particular requirements of "candidates." The court did not believe that the legislature intended to include one with the other, and hence that the provisions requiring the filing of statements did not apply to candidates for election as committeemen or members of a managing body of a political party, the latter not being "candidates for public office" in the sense meant by the legislature. They were regarded, however, as being embraced in the provisions relating to illegal expenditures and other corrupt acts.

In another case the court passes judgment upon whether a permanent body organized for civic purposes, which takes an active part with regard to a proposed constitutional amendment, and which circulates literature for the purpose of influencing voters, is a "com-

[1] In the opinion of the attorney general of Pennsylvania, a candidate for State office may authorize a State or a local committee to receive and expend moneys on his behalf, such authorization being filed with a State committee even though it functions for a limited territory. Such committees may act for State as well as local candidates. Agents may also be employed, but accounts are to be transferred to proper treasurers, who become responsible therefor. *Primary Election Expenses* (32 D. and C. R. 174, 1938).

[2] In the case of *In re Wilhelm* (111 Pa. Sup. 133, 169 Atl. 456), already considered, it is stated that a candidate may make contributions to another candidate or to his committee, but that such candidate or the treasurer of such committee alone becomes responsible for expenditures.

mittee" within the intendment of the law. This is the case of *In re Woodbury* in New York in 1916 (174 App. D. 569, 160 N. Y. Supp. 902), involving the application of the attorney general of the State for an order to compel an organization known as the Home Rule Tax Association to file a statement of its receipts and expenditures, under the provisions of the corrupt practices law. In upholding this application, the court referred to the definition of a "political committee" as given in the statute, which was to consist of three or more persons cooperating to bring about the election or defeat of a candidate or of a measure, and which made expenditures for the purpose; and pointed out that the one exception was "political committees or organizations for the discussion and advancement of political questions or principles without connection with any election." This exception, the court was of opinion, did not apply to the case now under review. It believed, furthermore, that the law, especially in view of its title and of its general regulation of receipts and expenditures of money in political campaigns, should have a broad interpretation. Continuing, the court stated:

> Concededly the defendant circulated literature seeking to defeat a proposition pending at the election for the amendment of the Constitution. It not only circulated its general literature, but referred to the election and asked the voters receiving the literature to attend the polls and vote against the proposition. Clearly the expenditure for that purpose cannot be considered as "without connection with any election." The expenditures were made directly in connection with the election. It is not claimed that the appellant is required to report as to its general receipts and disbursements, which are made in the prosecution of its ordinary affairs; but it must report, and, in the investigation of its expenses, inquiry may be made with reference to any receipts and expenditures which entered into the campaign carried on by it to defeat the proposition.

A decision has also been rendered with regard to expenditures made by a private individual not connected with any committee, and with regard to the constitutionality of measures restricting expenditures so made. In *State* v. *Pierce*, a case in Wisconsin in 1916 (163 Wis. 615, 158 N. W. 696), there was called in question that provision of the law which prohibited a person not a candidate or a member of a personal or party committee from making expenditures of a political nature in a county other than that in which he resided, except for certain specified purposes. The expenditures charged to be contrary to this provision were for the purpose of collecting facts concerning political, financial, and governmental affairs, which were to be communicated to the electors and tax payers with the intent of influencing votes in different counties. The court found that such expenditures were clearly within the inhibition of the statute; but it also found itself confronted with the provision of the Constitution of the State (Art. III, sec. 1), which declared: "Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press." With this provision the section of the act under review was, though with a dissenting opinion, held to be in conflict, the remainder of the act not being affected by the decision. The view of the court is thus given:

> The question presented is whether section 12.05 restrains or abridges the liberty of the citizen to freely speak and "publish his sentiments on all subjects." We think there is no doubt that it does do so. Under its terms a man, or body of

men, who are honestly convinced of the necessity of a change of policy in the State government, commit a crime if they spend any money in another county than their own in bringing their views to the notice of the voters of such other county. There is really but one exception to this, and that is that a public speaker may pay his traveling expenses in going to and from his own meetings, but even he may not hire a hall in which to make a speech. If this be not an abridgement of freedom of speech, it would be difficult to imagine what would be. Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens of other counties without committing a crime. Under such laws no great propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, and the reformer whose eye kindles with the dawning light of a better day must be content to confine his personal activities to the inhabitants of his own small bailiwick. Almost every forward step in political and governmental affairs comes as the result of long agitation and discussion in the press, on the rostrum, and in the open forum of personal contact. The agitation and discussion often goes on for years before the idea is formally indorsed by any party. Yet it will generally be the case that during this period there will be individual candidates, in one party or in the other, or both, who favor the new thought. Now this law means that in such a situation no man or group of men can do a stroke of political work involving expense in any other county than their own, however legitimate and praiseworthy be the means which are used. No political committee will take up the work, for the very good reason that the party organization has not endorsed the doctrine.

There are times also when devoted citizens firmly believe no organized political party stands for the right or deserves support and that an independent candidacy is necessary. Can it be that under such circumstances these citizens can be wholly deprived of the right to go to any part of the State at their own expense, collect information on the subject, and endeavor by word of mouth or by the distribution of printed matter to put the issue as they see it before their fellow voters who are not residents of their own county? We are very clearly of opinion that this question must be answered in the negative.

Mr. Pierce, according to the indictment, did this thing. He, being a resident of Rock County, spent money in Dane County in getting facts concerning governmental affairs and in communicating those facts to the people of the State at large, with the intent of influencing the voting at the approaching election. This cannot be made a criminal act while the constitutional guaranties of speech and freedom of the press remain as they now are.

We are by no means unmindful of the high and admirable purposes which inspired the authors of the Corrupt Practices Act. There is no member of this bench who is not in the fullest sympathy with any legislation which will tend to reduce to an absolute minimum the danger of corruption and coercion during political campaigns, but when such a law goes beyond regulation, and absolutely prohibits that which the Constitution expressly protects, the court can do nothing but say so.

A single decision has to do with the form of disbursement of moneys for political purposes, where a liberal attitude is taken. In *In re Kearney*, a Pennsylvania case in 1939 (136 Pa. Sup. 78, 7 Atl. (2) 159), involving the auditing of the account of a candidate for a borough tax collectorship, where the law had recently been amended to require payments of $10 or more by check or money order, and the candidate in question, being ignorant of this provision, had failed to comply. The Court, *inter alia*, declared that this failure should not result in loss of office, the failure being due to the candidate's ignorance, and involving no "moral turpitude or fraud." Even though a candidate is presumed to know the law, yet the matter here was of technical character, and the penalty was of "too severe and drastic" a character to be applied in the present case.

A single decision also is concerned with the matter of failure to list properly and openly the names of contributors to campaign funds. In the case of *In re McKeehan Account*, in Pennsylvania in 1927 (24 Luz. 516), where a considerable sum ($15,300 in bonds) was loaned by an unknown party or came from a fictitious person, whose identity

was not disclosed, this was regarded as a receipt from an anonymous source, and thus without the law. (It was also held in this case that there were found to be three watchers at a certain election place, though the law permitted but two.) The audit generally showed a larger amount of money contributed than was accounted for.

There are several Federal decisions in regard to prohibited contributions of money in political campaigns, in all of which the provisions of the statutes are rigidly upheld. In *United States* v. *Wurzbach* in 1930 (280 U. S. 396, 50 Sup. Ct. 167, 74 L. ed. 508; reversing 31 Fed. (2) 774), involving an indictment in respect to the Federal law forbidding Members of Congress to receive or solicit (here in connection with a State primary election) assessments or contributions for political purposes from Federal officers or employees, where it was contended that reference was only to elections for Federal offices, it was held that such an enactment was not beyond the power of Congress, and that its "language is perfectly intelligible and clearly embraces the acts charged."

In *Ex parte Curtis* in 1882 (106 U. S. 371, 1 Sup. Ct. 381, 27 L. Ed. 232), in habeas corpus proceedings in the State of New York in respect to the Federal statute which forbade the giving or receiving of political contributions between office-holders, the court pointed out that all such contributions by Federal officers and employees and the soliciting of funds therefor were not prohibited by the law, but that "it simply forbids their receiving or giving to each other." After reviewing the different measures of the National Government from the beginning which restrict in one way or another the activities of Federal officers and employees, the court continues:

> The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service * * *.
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> A feeling of independence under the law conduces to faithful public service, and nothing tends more to take away this feeling than a dread of dismissal. If contributions from those in public employment may be solicited by others in official authority, it is easy to see that what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the power of removal as a breach of some supposed duty, growing out of the political relations of the parties. Contributions secured under such circumstances will quite as likely be made to avoid the consequences of the personal displeasure of a superior, as to promote the political views of the contributor—to avoid a discharge from service, not to exercise a political privilege. The law contemplates no restrictions upon either giving or receiving, except so far as may be necessary to protect, in some degree, those in the public service against exactions through fear of personal loss. * * *
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> If persons in public employ may be called on by those in authority to contribute from their personal income to the expenses of political campaigns, and a refusal may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in. So, too, if a part of the compensation received for public services must be contributed for political purposes, it is easy to see that an increase of compensation may be required to provide the means to make the contribution, and that in this way the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage. Political parties must almost necessarily exist under a republican form of government; and when public employment depends to any considerable extent on party success, those in office will naturally be desirous of keeping the party to which they belong in power. * * * The apparent end of Congress will be accomplished if it prevents those in power from requiring help for such purposes as a condition to continued employment.

The same case, as *United States* v. *Curtis* (12 Fed. 824), came before a lower court the same year on a motion for a new trial and

arrest of judgment. In its denial of the motion, the court takes up the contention that Congress has no constitutional power to make a criminal offense of the giving, or requesting, or receiving of voluntary contributions for political purposes by subordinate Government officials. It comments thus:

> It will be observed, however, that the prohibition applies only when there is concerted action between officials in this behalf. The question is, then, whether it is competent for Congress to prohibit cooperation between officials in the raising of funds for political purposes.

After bringing out that it is proper for Congress to prohibit acts that are incompatible with the proper discharge of official duties or with proper efficiency, or that tend to demoralize public service, the court continues:

> It is not necessary to maintain that the cooperation of officials in raising funds for political objects is essentially demoralizing to the public service, or subversive of discipline. It is sufficient to justify the exercise of legislative discretion if the prohibited acts tend to introduce interests which disturb the just equipose of official relations. If it is suggested that it is the right and duty of every good citizen to aid in promoting such political objects as he deems to be wise and beneficial, and that Congress has no constitutional power to abridge that right, the answer is that no citizen is required to hold a public office, and if he is unwilling to do so upon such conditions as are prescribed by that department of the government which creates the office, fixes its tenure, and regulates its incidents, it is his duty to resign.

Another Federal decision is concerned with the violation of the statute forbidding the soliciting of political contributions from Federal employees. In *United States* v. *Scott*, in 1895 (74 Fed. 213), the indictment of a certain collector of internal revenue in the State of Kentucky for the soliciting of amounts ranging from $500 to $1,800 from different storekeepers and gaugers for the benefit of a political committee, in alleged violation of the Federal law, was upheld.[1]

In still another Federal decision the matter at issue is the violation of the provision against the soliciting of money for political purposes in a building or quarters used for Government purposes. This is the case of *United States* v. *Thayer*, in 1907 (209 U. S. 39, 28 Sup. Ct. 426, 52 L. Ed. 673; reversing 154 Fed. 508), where the defendant was in the State of Texas charged with having sent letters to Federal employees soliciting campaign contributions which were intended to be read in a post-office building, and which were actually read there, contrary to the provisions of the statute. Its purpose was, the court affirmed, "to check a political abuse, which is not different in kind, whether practiced by letter or by word of mouth." Such act, however, in the case of a letter was not complete till it was opened by the recipient, no matter where read; the solicitation was at the place where the letter was received. In the present instance the act as regards both time and place was held to have occurred in the post-office building.

A similar decision is that of *United States* v. *Smith* in 1908 (163 Fed. 926), where a postmaster in the State of Alabama had been solicited for contributions through matter handed to him in his postoffice without stamps attached.[2]

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[1] In a similar case, *United States* v. *Riley* (74 Fed. 210), where the facts were largely the same with respect to the acts of a deputy collector of internal revenue, a conviction was not sustained for the reason that there was a fatal variance between the indictment and the proof.

[2] Another case having to do with the solicitation of contributions from Government employees is that of *United States* v. *Shaw* (59 Fed. 110), which came up in 1893 in a Federal court in the State of Kentucky. This was decided upon technical grounds apart from the provisions of the corrupt practices statute.

There is also a State decision in respect to the solicitation of political contributions from employees in the civil service in violation of the law upon the subject. This is the case of *People* v. *Murray*, in Illinois in 1923 (307 Ill. 349, 138 N. E. 649), where in a criminal action by the State it appeared that the employees in the department of local improvements of the city of Chicago were called upon at a meeting organized for the purpose, with the knowledge and connivance of the defendant who was in charge of certain operations, to subscribe to a political newspaper. It was held that such a law was not in contravention of the constitutional provisions either as to the freedom of elections or as to the right to express opinions. It was also declared that the employees in the classified civil service were not thus denied any political rights, and were not being removed from the body of citizens in general and made a class apart, for the right was reserved to such persons as to all others to make contributions for political purposes as they might see fit.

After pointing out the purposes of the corrupt practices law in the present connection, the court has this to say:

> The purpose of the law is to protect the independence of civil-service officers and employees against subservience to a political machine, whether the attempt to impose it is made directly by those in official authority or indirectly by volunteer managers having no official standing. If the managers of political campaigns are permitted to call on officers or employees to contribute money to be used for political purposes * * * it is little protection to the harassed employee that payment of the assessment cannot be solicited of him by a fellow employee or in the place where he is at work. Possibly he will fail to appreciate the benevolence of the constitutional provision which protects him in his right to be assessed. * * * No one can question the necessity or propriety of raising money for political purposes; no one can defend the propriety of raising it by an assessment upon or forced contributions from persons engaged in the public service or by what may present itself to such persons as an involuntary assessment or contribution. * * *
>
> Solicitation does not require any great degree of earnestness or persistence in preferring a request. Solicitation is not necessarily by word of mouth or writing. It may be by action which the relation of the parties justified in construing into a request * * * It requires no particular degree of importunity, entreaty, imploration, or supplication.

In the remaining decisions having to do with the duties and responsibilities of campaign committees, the questions at issue belong rather to private than to public law, being as they are more of the nature of private contracts brought before the courts for enforcement. In one of them, *Sedalia Board of Trade* v. *Brady*, a case in Missouri in 1899 (78 Mo. App. 585), there was involved an agreement between the board of trade of the city of Sedalia and the chairman of the Democratic City Central Committee of the city of St. Louis. The former had urged the removal of the capital of the State to Sedalia, and had paid over to the latter, who was soliciting contributions, the sum of $1,200, with the understanding that he would do all he could to advertise Sedalia and present its claims to the voters. This the defendent had duly promised to do, and also to turn over the money to the proper officer of the committee, and to see that it was used for the purposes agreed upon. The defendant, however, in fact refused to turn the money over as he had promised, and converted it to his own use. The action was to recover the amount advanced. It appeared on the trial that the agent of the plaintiff had not carried out the agreement altogether according to his instructions, and that the defendant was himself to pay the money out to various persons. The corrupt practices act required that all committees have a treasurer before

they could receive money, such treasurer having entire charge thereof. The court held the contract to be unenforceable because of its plain violation of the law. Hence there could be no recovery under the contract, and the law left the parties as it found them.

The second case, that of *Smith* v. *Babcock*, in New York in 1896 (3 App. D. 6, 37 N. Y. Supp. 965), involved a claim for work, labor, and services, which was resisted by the defendant on the ground that expenditures had been made not permitted by the corrupt practices law. Here the defendant had been appointed county chairman of a political party, but not having the time to perform the duties of this office, had engaged another person to do so, of whom the plaintiff was the assignee, and who was to be personally responsible to the defendant. The acting chairman duly carried out his part; but among the several things done, he was alleged to have violated the provisions of the corrupt practices law, which allowed contributions only for certain purposes. The court, however, held the contract to be really a personal one, and not a political one. If the fact of an ulterior purpose had been brought out, and there had truly been an intention to defeat or evade the statute, then the contract would have been void. As this did not appear, the court held that the contract, being essentially of a personal nature, could be duly enforced.

The third case is somewhat analogous to the one just cited. This is the case of *Dietrich* v. *Dunkelberger*, which was decided in Pennsylvania in 1917 (9 Berks. 179, 27 D. R. 112). Here it appeared that the defendant, who had been a candidate for a judicial clerkship in a certain county, had asked the plaintiff to conduct his campaign and to expend money for necessary and legitimate purposes. On the presentment of a bill by the plaintiff for the sum of $1,700 (less $300 already paid), of which $1,000 was for personal services, $250 for the use of an automobile, and the remainder for printing, traveling expenses, etc., the defendant declined payment. In this he was upheld by the court. After referring to *Bechtel's Election Expenses*, previously considered, it declared that the only persons who were permitted by the law to expend money for political purposes were a candidate and a duly appointed treasurer; and hence that the plaintiff could not legally make the expenditures which he had made.[1]

[1] All candidates at a primary election, according to the opinion of the attorney general of Pennsylvania in 1909, are to file statements, whether nominated or not, and no recognition of a treasurer or committee in such elections is to be had, the candidates being responsible for all transactions. *Corrupt Practices Act* (18 D. R. 18).

CHAPTER IV

DECISIONS RELATING TO REQUIREMENT OF FILING OF STATEMENTS REGARDING RECEIPTS AND EXPENDITURES

Court decisions affecting the provisions of the corrupt practices acts which require the filing of statements in regard to campaign receipts and disbursements, together with those affecting the provisions which specify penalties for violation, constitute, as we have seen, the major portion of all the decisions relating to the acts. The former class of decisions touch a number of matters, the most important of which is perhaps that having to do with the failure of candidates and other persons to file the statement required of them. So far as a general doctrine may be drawn from such decisions, it appears that, while the courts insist upon a full and sincere obedience to the laws, and will permit no omissions or evasions with respect to essential matters, they are content for the most part to exact compliance only with the material provisions, allowing greater or less latitude in regard to minor details.

The most notable case on the subject is that of the impeachment of the Governor of the State of New York in 1913 (Proceedings of the Court for the Trial of Impeachments. *The People of the State of New York by the Assembly Thereof* v. *William Sulzer, as Governor*). The matter came before the really highest court of the State, that is, the Court for the Trial of Impeachments.[1]

The respondent had been duly elected to the office of Governor; and later proceedings in the nature of impeachment were instituted against him because of his alleged failure to file a full and correct statement of his receipts during his campaign for office. It was held that no excuse could be accepted for want of compliance with the manifest provisions of the statute; and the outcome of the trial was the removal of the Governor from office.

The articles of impeachment were eight in number. Two of them (Arts. I, II) were based directly upon the respondent's failure to comply with the provisions of the corrupt practices laws respecting the filing of statements, while the remaining six were based upon acts resulting in some way from this violation or occurring subsequently thereto. Upon three of the articles conviction was secured, two of which were the articles concerned directly with the violation of the provisions regarding the filing of statements.[2]

[1] In some respects the case belongs among the decisions relating to the infliction of punishment for violation of the corrupt practices provisions, but as the question relates mainly to the proper filing of statements, it can perhaps be considered best in this place.

[2] The third article which proved effective related to the suppression of evidence (Art. IV). Into the whole inquiry involved in this case, we need not enter, nor into some of the matters which occupied so much of the attention of the trial body, especially as to whether acts committed before induction into office were impeachable, and whether impeachment were itself the proper course in the premises. It is only necessary in the present place to consider the points brought out which relate to our immediate study.

The first article involving the corrupt practices provisions (Art. I) referred to the returns regarding contributions made to the campaign fund of the respondent (the Governor), which returns were alleged to be untrue in that they did not contain a complete list of contributions. The second article (Art. II) was concerned with the making by him of an alleged false oath to the effect that the statement rendered was true. Both of these offenses were charged to be in violation of certain provisions of the corrupt practices laws of the State. The main question before the high court was whether the respondent could be removed from office for the offense. The matter was not one simply of disqualification for office because of the commission of the offenses charged. The latter penalty is expressly provided for in most of the States in connection with the failure of a candidate to file the statement required. This provision, which had been originally included in the statute of New York, had only a few years before been stricken out.[1]

In their argument before the trial body, counsel for the respondent undertook to prove that inasmuch as no penalty was attached to the violation of these provisions, it was not a criminal offense; that a particular section referred to contributions *by candidates*, and not to those by other persons, in respect to which the statement of the respondent was true; that another particular section did not require an affidavit as to its correctness; that the mere failure to file a statement could not be regarded as a real offense; that at most the law only gave an opportunity to demand a correct statement, in respect to which the candidate was entitled to be notified; and that an incorrect statement was not material, and hence did not constitute perjury; and that perjury cannot be based upon an oath not required or authorized by the law.

The High Court of Impeachment included the members both of the State senate and of the court of appeals. It is the opinions of the latter to which we may devote our attention. These opinions were given in connection with the votes on Article I, the judges voting on Article II, as they stated, on the same lines of reasoning. The opinions contained much besides the question of the corrupt practices provisions and their violation. The question of the propriety of the impeachment proceedings received no little consideration, and some of the judges who voted for acquittal were in considerable measure influenced thereto by this feature of the case.

Of the nine judges, five held the respondent to be guilty as charged, in having failed to make a full and true return of the contributions made to his campaign funds. In their several opinions, rendered and filed with their votes, the objects of the corrupt practices provisions are carefully considered, due regard being accorded to the fact that their enactment had been deemed to be necessary for the public interests. In the present case the violation of these provisions was believed to be clearly proved. The views of these judges follow:

MILLER, J. The offense charged in Article I was committed after the election. Its consideration then does not involve a review of the determination of the electors. It was a political offense, an offense directly against the body politic and not one whose immediate consequences were confined to particular individuals. Was it so related to his political life as to unfit him to discharge the duties of his office? It is not strange that there is no precedent for precisely such a case. The strange thing in view of the purpose of the Act, the disclosures which

[1] The removal was due to the decision in the case of *Stryker* v. *Churchill* in 1903 (39 Misc. 578, 80 N. Y. Supp. 588), to be later considered, in which the forfeiture provision was held to be unconstitutional. The provision was removed in 1910 (Laws, ch. 439).

preceded its passage, and the public discussions of the last few years is that any one should have so grossly violated it as to give occasion for this trial.

The dominant purpose of this Act as disclosed by its title, its text, and contemporaneous political history was to secure publicity of campaign contributions and expenditures. That was a valid purpose, and did not conflict with Article XIII, section 1, of the Constitution. Prescribing an oath, declaration, or test as a qualification for office is very different from requiring a statement of campaign contributions and expenditures to be filed. The officer-elect may not enter upon his duties without taking the oath prescribed; the failure to file the statement or the filing of a false statement may or may not constitute a cause for impeachment according to the circumstances of the case. Requiring disclosures of acts connected with a candidate's election to office, which the public have the right to know, is far different from requiring disclosure of one's private affairs with which the public have no concern. Moreover, the statute violated in this case does not come within the spirit or purpose of the said Constitutional prohibition. Concededly the legislature could provide for a forfeiture of the office upon conviction of a violation of the statute. A court of impeachment can convict and remove from office by a single judgment. I attach in this connection no importance to the fact that defeated as well as successful candidates are required to make the statement.

There was and is a growing body of opinion that special interests by secret campaign contributions are enabled to exert an invisible and sinister influence on the conduct of public affairs. The purpose of requiring publicity was not simply to impose a check but to enable the public to scrutinize the conduct of their public officials in the light of the influences contributing to their election. Possibly the respondent made concealment because he did not wish the donors to find out how much more was contributed than expended. But the evidence tends to prove that his concealment was also due to a sense of improper obligation to the donors or some of them. The guilty consciousness evidenced by unlawful concealment, of accepting money given for some ulterior purpose would equally affect his official conduct, whether the money remained in his pocket, was invested in stocks, in the hands of brokers, or expended to promote his election. His violation of the corrupt practices Act evidences a situation as intimately related to the discharge of his official duty as though he had taken money for an express promise to reward the donor by some official act. (Proceedings, pp. 1654–1656.)

Collin, J. The truth undoubtedly is that never before in England or the United States has a state of facts arisen similar or analogous to the facts here. Corrupt Practices Acts are new and strictly modern. Until a few decades ago the amount of money a candidate or his party received or spent, the sources from which it came, the purposes for which and the intent with which it was contributed were universally deemed of no concern, interest, or importance to the State or the citizens. Obvious and dangerous evils springing from the nature of the contributions for campaign purposes, their amounts, purposes, and manner of use caused the destruction of this tradition or indifference and a complete change in the attitude of the people, and the provisions of the election law and the corrupt practices Act relating to those matters are the result. The purposes of those provisions are, speaking generally, three: *First*, to prevent actual corruption in elections through the trafficking in votes and in similar ways; *second*, to limit the expenditures of candidates themselves in order, among other things, that there may not be too great an inequality of opportunity between the candidates having large and those having small means; and *third*, to secure full and complete publicity of all, actually all, the contributions from any source to any recipient for campaign purposes, in order, among other reasons, that all the influences over or upon the candidate elected while he is in office through obligations, gratitude, or profit and personal advantage, and whether or not the contributions in their duplication to the opposing candidates suggested or indicated sinister or malign motives and intent, should be exposed to and discernible by the public. To accomplish these ends it was obviously necessary that the defeated candidate should make the required statements. A contributor to two or more parties or the opposing candidates of two or more parties would remain undisclosed were the statements required of the successful candidate only. Of these three purposes, that which requires full and complete publicity of campaign contributions is probably the most protective of the public good and the most salutary. It tends to guard the candidate against placing himself under influences wholly indifferent to the welfare of the State and selfish or insidious, or to make idle and ineffectual throughout his official term those influences, by exposing them. It is throughout the term of office a shield and a check to official conduct.

Its purpose was not to prevent the candidate from misappropriating the contributions. Such purpose did not enter into its origination. The purpose of it was to aid the officer throughout his official tenure in remaining free from, or to strengthen him, through fear of accusation and exposure, against dishonest or unfair conduct in all the matters of administration or legislation. It attaches itself to and is connected with the officer rather than to the candidate or his election, and in purpose and effect supplements the oath of office. It had no prototype, it sprang from modern conditions and was new and original in substance and form. (*Ibid.*, pp. 1606–1608.)

HISCOCK, J. It seems to me that this statute which we are considering had two purposes. One was by compelling a candidate to state the contributions which he had received, to furnish the starting point for the determination, whether in his expenditures he had been guilty of corruption, bribery, or fraud, and, in that aspect, the statute applied to every candidate, whether successful or not, and not especially to the respondent as a successful candidate. But it seems to me that the statute had that other aspect, which has been referred to, of compelling a candidate to disclose the contributions which had been made to his campaign, and in that way to disclose those influences which contributed to his election and which, perhaps, might attend and follow him as he entered upon his office, while he was in the office, and during the performance of his official acts, an influence which might enter into the performance of those acts, and in that respect, it applied especially to the respondent as the successful candidate, and, as I say, rises to the dignity of an impeachable offense. * * *

Undoubtedly one of the objects of the statute requiring a candidate to make a public statement of campaign contributions received by him, was to give a starting point and make it more easy to ascertain whether he had been guilty of the corrupt and unlawful expenditures of money in aid of his election. So far as that object is concerned, it has been rightly said that it is applicable to every candidate for office, whether successful or not, and has no special bearing upon the successful candidate who subsequently enters upon the office. But, as it seems to me, we may fairly attribute another purpose to this Act. In view of the public agitation concerning, and deep feeling against, campaign contributions to a candidate by corporations and those who might have special and selfish interests in his official acts, it is reasonable to believe that another aim of this Act was to compel the successful candidate by publishing his campaign contributions, to make it clear what influences of this character, if any, attended and accompanied and surrounded him as he entered upon his office and upon the discharge of his official duties. Certainly this beneficial purpose is accomplished by the statute, and in this respect it relates to and affects solely the successful candidate and the discharge of his official duties, and, as it seems to me, its violation in the present case has such a relation to the office of the respondent, to his official tenure, and to the discharge of his official duties, that it reasonably and rightfully comes within the spirit of the Constitution and principles applicable to impeachment. (*Ibid.*, pp. 1635, 1639.)

HOGAN, J. Compliance with the statute was a step required to the legal and proper performance of the duties of the respondent as Governor of the State of New York, and was connected with and related to the office of Governor, and a violation of such act may be inquired into and the effect of the same determined by the Court for the Trial of Impeachments. The fact that unsuccessful candidates were required to file statements equally with the successful candidate emphasizes the general purpose and effect of the statute—publicity of the facts required by law to be stated, which, by reason of the investigations preceding the enactment of the corrupt practices law, was deemed of vital interest to the people (*Ibid.*, p. 1646).

CUDDEBACK, J. The corrupt practices Act touches matters connected with the election so closely that its violation by a successful candidate presents a case different from any that has arisen before. The candidate who disregards this Act shows an unfitness for office not shown by the commission of any other crime. The case certainly is not within the reason given for refusing to impeach an officer on account of offenses before he took office. The electors have not condoned it, and the offense has some relation to the office.

The people have the right to know who have contributed to bring about the officer's election in order that they may know who will exercise control over him, or will influence him, in the discharge of his duties. To that end the law requires the candidate to file a statement of the moneys received by him for campaign purposes.

This is a purpose sought beyond the general purpose which the lawmakers had in view when they required all candidates, successful or defeated, to make return

of their campaign receipts and disbursements. The statement from the defeated candidate will show who is contributing money to elections. The statement from the successful candidate will show further to what influences men in office are subject. (*Ibid.*, p. 1613.)

Of the four judges holding the respondent not guilty, two (Chase, J., and Werner, J.) appear to be actuated mainly by the uncertainty as to the propriety of the impeachment proceedings. A third judge questions, in addition, the constitutionality of a test designed to determine the identity of parties aiding a successful candidate. The fourth judge holding the minority view considers the failure of the respondent to file a correct statement as merely a "noncriminal violation of a statutory provision", for which the punishment designated in the impeachment proceedings is inappropriate. The opinions of these last two may be quoted:

CULLEN, C. J. The statute is directed to securing the purity of elections, and enacted for that purpose, is valid. The suggestion is made that it was intended also to insure publicity of the names of those who had assisted the successful candidate so that the people might judge of his subsequent conduct in office and know whether it was dictated by subservience to persons or interests who had contributed aid. A statute enacted to accomplish that object would, to say the least, be of doubtful constitutionality. The Constitution prescribes the oath to be taken by all public officers and then enacts: "and no other oath, declaration or test shall be required as a qualification for any office of public trust". A statute prescribing that any one elected to office should state to whom and to what extent others had aided him as a condition of entry upon office, might well be deemed in conflict with the constitutional provision. Will it be asserted that a law could require an officer, as a condition of his entry upon office, to declare under oath all his dealings during the past years, the property he may own in specific detail, so that the people may judge how far personal interest affects his official conduct? (*Ibid.*, p. 1624.)

BARTLETT, J. I agree that this section [of the corrupt practices law] requires candidates to file statements of their campaign receipts; but as I construe the subsequent provisions of the election law, they do not make it a crime to disregard this requirement or file a false statement. We have, therefore, simply a noncriminal violation of statutory provision, which provision is not restricted in its operations to officers-elect, but applies equally to all candidates, whether successful or unsuccessful. The obligation to file a truthful statement of campaign receipts was imposed by law upon Oscar S. Straus and Job E. Hedges just as much as upon William Sulzer. Indeed, it was imposed upon the hundreds of other persons who had been candidates for various offices throughout the State at the general election last year. I cannot perceive how a neglect to comply with the statute in this regard can be considered as official neglect in any respect whatever (*Ibid.*, p. 1694).

In a case in Kentucky the court casts a stern eye upon the failure of a candidate to render a complete statement as to contributions and expenditures as required by the statute. In *Creech* v. *Fields* in 1939 (276 Ky. 359, 124 S. W. (2) 503), involving contest proceedings for the forfeiture of the office of police judge by a successful candidate, it appeared that in both his pre-election and post-election statements, despite due setting forth of the amounts of money concerned; there was omission of the names of persons and of dates, while instead of the oath prescribed by law, there was only a signature accompanied by a jurat. The court, *inter alia*, while willing to take a liberal view of the provisions of the statute in general, and to be satisfied with a "substantial compliance" therewith, as found in other decisions, declared that in the present case no such compliance could be regarded as possible, the omissions with regard to "money or other thing of value contributed, disbursed, expended, or promised" being "fatally insufficient."

In the case of *Horn* v. *Wells* in Kentucky in 1934 (253 Ky. 494, 69 S. W. (2) 1011), involving contest proceedings in respect to membership in a county board of education, the omission in an expense statement of a contrbution of $200 by a brother-in-law of the successful candidate, was held to the omission of an important item, with the result of vacancy in the office concerned.

In a case in Wisconsin in 1938, *State* v. *Evans* (229 Wis. 304, 282 N. W. 14), in which were involved on appeal special proceedings in respect to an election for a municipal court judgeship, charges were made of illegal expenditures for and the distribution of match containers and mirrors with political advertising thereupon, these failing to be listed in the statement required by law. In announcing that the election in question was void, that the successful candidate should be ousted from office, and the office declared vacant, the court declared that the provisions of the law with regard to acts that were "unsubstantial and trivial" did not apply, the offenses here being "deliberate, intentional, and direct" violations of the statute.

In the case of *State* v. *Walker* in Oklahoma in 1926 (122 Okla. 95, 251 Pac. 497), in which there was a praying for disclosures of those responsible for the preparation of political literature and of its character in respect to the office of State Corporation Commissioner, it was declared by the court that the statute made clear that the failure of the candidate to comply with the provisions of the law as to filing a statement of expenses, with the setting down of everything contemplated by it, subjected him to various penalties, in the barring of his name from the ballot, the denial to him of a certificate of election, the denial to him of his right to office at the time or in the future, besides fine and imprisonment. In case of election, however, the court pointed out, only a criminal conviction could prevent entrance upon office and the discharge of its duties.

A similarly strict compliance with the law is insisted upon with respect to the statements of receipts and disbursements by political committees and by the agents of candidates, and even by persons not treasurers or members of committees. The view is taken that when the law distinctly provides for such accounting, there can be no escape or evasion. An illustration of this attitude is found in a case already considered, *Umbel's Election* (57 Pitts. 343, 43 Pa. Sup. Ct. 598; affirmed, 231 Pa. St. 94, 80 Atl. 541). In proceedings to demand an accounting of funds, it was found that money which was to be expended on behalf of a candidate for judicial office to secure his nomination was entrusted, not to a regular political committee, but to the individual agents of the candidate. In the returns rendered by them in respect to this money, there was failure to show definitely how the money was applied, as required by the law. The accounts embraced two classes of items: those personally expended, and payments by the candidate to others for expenditures included in the act. In the latter class there were 12 items, showing money advanced to five persons, and aggregating $3,670. The only words used in respect to these disbursements were "for expending in my behalf under the first, second, sixth, seventh, and eighth paragraphs of section 4, of act, March 5, 1906." No further purpose was disclosed in the accounts. The receipts of the candidate were also indefinitely stated. Upon this the court commented:

An account which merely exhibits the facts that money was in the hands of an agent to be used for legitimate purposes, and does not show the persons to whom and the purposes for which the agent paid the money is not a "full, true, and detailed statement" as the Act plainly contemplates.

The court further states what is necessary in a full account.

To be a true account within the spirit and intent of the Act, it must set forth each and every sum of money disbursed by the candidate, whether personally or by his agent, for election expenses, the date of each disbursement, the name of the person to whom paid, and the object or purpose for which the same was disbursed. * * * Filing the receipt of his agent for the money placed in his hands does not fully meet the requirements of the Act.

In a Maryland case in 1911, *Healy* v. *State* (115 Md. 377, 80 Atl. 1074), an analogous question arose in connection with the provisions of the statute which required subtreasurers to report to their treasurers the use made of all moneys placed in their hands by the latter, stating to whom and for what purposes the sums had been paid out. In proceedings respecting an alleged improper accounting, it was found that the appellant had been appointed subtreasurer for certain precincts by the State central committee of one of the political parties, and that he had received from the treasurer thereof the sum of $300. In the report which he rendered he neglected to specify in detail the objects of his expenditures, and the purposes for which they were made, employing only the terms "watchers, challengers, messengers, etc.," to indicate their purposes. The court held that this was not enough, but that in the intent of the legislature the actual names of the persons who received the money should be stated, as well as the names of those who had made the appointments. In passing upon the report submitted, the court said:

The obvious answer to this contention is that such a report merely states the purposes for which the money was expended, whereas the law expressly requires not only "for what purposes said money was expended, but to whom paid." * * * Manifestly, the treasurer could not comply with the duty imposed upon him by the Act in this respect, unless the report of the subtreasurer specified the names of the persons to whom he expended the money placed in his hands by the treasurer. It would seem to be reasonably clear that it was the intention of the legislature that the public should be informed by the accounts of the treasurer and subtreasurer, not only from whom the money was received, but to whom it was paid, and for what purpose it was applied. The intention could not be gratified unless the subtreasurer is required to give the names of the persons to whom he has expended the money received from the treasurer. The Act was passed to limit the expenditure of money by candidates for public office, and to minimize the corrupt use of money in politics. It is a salutary measure, and, if rigidly enforced, would vastly improve political conditions, but if the construction contended for by the appellant were adopted, the main purpose of the Act * * * might be in large measure defeated by the practice of the very acts which it was enacted to prohibit.

A case on somewhat the same order was presented in *People* v. *Knott* in New York in 1919 (176 N. Y. Supp. 321, 187 App. D. 604; overruling 172 N. Y. Supp. 249, 104 Misc. 378; see also 37 N. Y. Crim. Rep. 91, 462, 228 N. Y. 608, 127 N. E. 329), where in habeas corpus proceedings with respect to a certain election—to be more fully described at a later stage—it appeared that the relator (the defendant) had, while manager of a political committee, induced a subordinate to enter an item in his statement of expenses, of $11,500 as for renting of halls, salaries, and expenses of speakers, auto hire, etc., when in fact this sum had been expended solely for the salaries of two speakers, all in alleged contravention of the requirement of the

corrupt practices act. In holding that the entry in question was not a true one, the court said:

> The legislature had defined the purposes for which money might lawfully be expended in connection with an election and it enacted the provisions to which reference has been made, with a view to insuring compliance therewith and to discourage undue expenditures for election purposes by securing the publicity with respect to such disbursements that would be afforded by full and true itemized statements as required by section 546. The argument in behalf of the relator, to the effect that the statement filed constituted a compliance with the requirements of the law, is so clearly untenable that it requires no further consideration.

In another decision are declared the purposes and intendments of the statute with regard to the filing of statements by candidates and their treasurers. This is *Liebel's Case* in Pennsylvania (33 Pa. C. C. 667, 16 D. R. 938), already referred to, where it appeared that in the accounts rendered by a successful candidate for the office of mayor of the city of Erie mention was omitted of some of his expenditures, including those for the publication, before his formal announcement, of articles on certain waterworks question having an important bearing on the election—which omission was charged to be in violation of the law. What should be brought out in the statement of candidates and their treasurers is thus stated by the court:

> Where a candidate contributes money to the treasurer of a political party or committee, his account should set out the name of the treasurer and the party or committee of which he is treasurer, but it is not necessary for the candidate's account to set out the specific purpose for which the money is used. But the treasurer's account should set forth not only each person to whom money is paid and the amount, but also should set out specifically for what purpose or purposes it was paid. In this respect the accounts of the treasurers are wrong, for they lump a number of different purposes for which the money was paid, which the evidence shows was not true. In other words, if a party be paid money "for dissemination of information to the public," it should be so stated; and if another be paid "for transportation of voters to and from the polls," that should be stated, etc. It does not give adequate information to the public to say in a lumping way, that a large number of men were paid the sums opposite their names for the performance of the various services for which the law permits compensation to be made. Section 5 of said act requires that the account set forth the object or purpose for which the money was disbursed.
>
> When a citizen in view of his prospective candidacy makes contracts, involving the expenditure of money, to further his campaign; and later makes formal announcement; such expenditures should be included in his account; and if paid before the primaries should be stated in that account, and if paid later should be set out in his election account; otherwise a candidate could incur any amount of illegal expenditures before making formal announcement of his candidacy and thereby be exempt from the operation of said statute. In the case at bar, the expenditures made by Mr. Liebel on the waterworks question were entirely legitimate, but should have been included in his accounts.

In still another case it is announced that the several items required to be included in the accounts must be set down directly and on the motion of the accountants themselves, and not through the prompting or the insistence of other persons. In *Stineman's Election Account* in Pennsylvania in 1912 (22 D. R. 86) the court declined to order a bill of particulars of the petitioners, as asked for by the treasurer of a county committee, in the accounting of his funds, under the provisions of the statute, where such treasurer had made no apparent effort to conform to the law, and where such a bill would be of little assistance to him in meeting the allegations of the petitioners. Of the source of the sum of $1,291 especially, no mention had been made; while only eight items of expense were shown, two being to the same party. Commenting on the request of the treasurer, the court declared:

It is not the intent of the act that this burden should be shifted by means of a general method of procedure adopted by the courts that will defeat the purpose of the act, that is, to prevent the illegal use of money in securing nominations and elections, which would be the result if courts were in every case to require exceptants [the petitioners] to file a bill of particulars, and by this means inform the accountant of the particular matters of irregularity known to the exceptant, and thus enable him to come into court with an amended account, embracing the defects pointed out by the exceptant, and by alleging oversight or other excuse, ask and secure permission to file an amended account, and which in some, if not in both cases, would entirely close the incident and end the case, and by this means the delinquent accountant would escape the just penalties due him. To our mind such a general practice would invite the filing of imperfect and dishonest accounts by treasurers of political parties or committees, knowing that if exceptions were filed, bills of particulars would be allowed as of course, and then, after learning wherein their account was defective, they could escape by filing an amended account, correcting or including the items "specifically stated" in the bill of particulars and by this means defeat the purpose of the act. * * *

If the accounts of political treasurers can be filed in this form, and the courts, by requiring the exceptants to file a bill of particulars before the accountant is required to answer for his apparent disregard or defiance of the law, then the burden would be shifted from the accountant to the exceptant, and political treasurers could then avoid making the discoveries required by law, and if ever required to file a true and full account of receipts and expenditures of money passing through their hands, this would depend upon the ability and energy of exceptants to discover and call to the accountant's attention by bill of particulars transactions which the accountant in many instances had conveniently forgotten.

Yet though the courts expect an observance of the provisions regarding statements in all essential points, they are usually willing at the same time to take a reasonable, or sometimes even liberal, view of the manner in which various particulars are complied with; and are ready to give due consideration to attendant circumstances. They are satisfied if the spirit of the law is carried out, and will not insist upon unnecessary forms, or upon the inclusion of *minutiae* or nonessentials. This is especially true with regard to the contents of statements, which, as we have seen, are usually to be "full, true, and detailed," and to be with regard to the several items of account.

In the Maryland case just cited, for instance, the court was prepared to make allowance for mitigating features; and as no improper motive was disclosed on the part of the subtreasurer, nor charge of want of good faith made, and as he had simply been following the practice supposed to be authorized by the law, the court was satisfied with the imposition of a nominal fine. It also took occasion to state that the law being penal in character was to be strictly construed.

This attitude is further illustrated in a California case in 1901, *Land* v. *Clark* (132 Calif. 673, 64 Pac. 1071). An action had been brought against the incumbent of the office of mayor of the city of Sacramento because of his refusal to vacate his office in favor of a candidate who had just been elected thereto. The refusal of the incumbent was based on the alleged failure of the successful candidate to file a proper statement of his receipts and expenditures, as was required by the corrupt practices law which, on such failure, enjoined the incumbent not to surrender his office to the offending candidate. In the statement actually prepared it was found that the only entry under the head of "Receipts" was "no money received." This the court held to be quite satisfactory, and indeed more than the law exacted. "The purity of elections act," it said, "is not concerned in things the candidate did not do, but only in those things he did do." Under the head of "Expenditures" there was one item of $200 to Republican City Central

Committee for campaign purposes. This the court also regarded as sufficient, saying:

> We have in this statement the nature and amount of the items, to whom contributed, and the purposes for which it was contributed. A contribution to the regularly constituted committee of a political party for campaign purposes is allowable, and perfectly proper under the law. And the money, being given for campaign purposes, it will be assumed that it was to be expended in a legitimate and lawful way. A statement of the candidate, showing such a contribution, is in substantial compliance with the law.

In the statement there was one remaining item: "Sundries and incidentals, $22.65." As the statute permitted $100 for incidentals, and as it did not require vouchers for amounts under five dollars, the court did not consider this a violation of the law. Besides, the Act provided that a candidate was not to be adjudged guilty if the offense were trivial, unimportant, and limited in character, and there were no want of good faith on his part. To hold such expenses for incidentals to be a violation of the law, the court reasoned, would render the act an absurdity, and would make it bear harder upon an honest than upon a dishonest candidate. It did not deem it to be the proper sort of correction—

> For the court to annul an election of a mayor of the city of Sacramento by reason of a defect in a single item in his statement of expenditures, that item being of the character above described.

As to the general attitude of the court upon what should be properly included in statements, and what may be omitted without detriment, the court said:

> It thus appears that the trial court is vested with a large amount of discretion in these matters, and successful candidates are not to forfeit office merely for a technical violation of the act.

Another rather liberal interpretation of the provisions in the corrupt practices acts is found in the case of *Heiskell* v. *Lowe* in Tennessee in 1912 (126 Tenn. 475, 153 S. W. 284), though with a strong dissenting opinion. This was an action by the mayor-elect of the city of Knoxville to compel the issuance to him of a certificate of election by the election commissioners, which involved the determination of a statute applying to this city only. It was held that a candidate was not required to go into details as to how his expenditures were made, unless they were under his personal direction. Said the court:

> The mere fact that the fund was used for his benefit does not place him within the purview of the statute, unless to him there be imputed some control over the fund. * * * Candidates seldom have a definite idea of the particulars relating to their campaign expenses. They cannot be expected to have in many cases. They have no control over these expenditures, and when information is desired with reference to such expenses, it is from the managers that this information is sought.

It concluded therefore that since the candidate was not in control of the campaign funds, he was not compelled to give the sources of the balances of his contributions or the details of his expenditures. The court held that the failure to show the purpose of a single expenditure of $15, the payee of the amount being named, was a small matter, not affecting the result, and did not render the candidate ineligible for office; nor that a sum given for charitable purposes not connected with the political campaign need have been included in the statement of accounts.

In a New York case in 1910, *In re McLennan* (65 Misc. 644 122 N. Y. Supp. 409; affirmed, 142 App. D. 926, 204 N. Y. 608, 97 N. E. 1108), the position of the court in respect to the proper accounting to be expected in statements is also carefully gone into. Here in an action against a successful candidate to secure an order to require the treasurer of his political committee to file an account of receipts and disbursements in greater detail, the court held that the statement was already fairly complete; and announced that with respect to the statements required by the law, the intent of the act was satisfied if the statements included every disbursement, the names of all persons to whom payments were made, and the purposes for which they were made; and that minute details of accounts were not required by it. The court declared:

> The object of this statute is clearly to compel publicity with regard to compaign expenses; to prevent by such publicity the improper use of campaign funds, and, in case of improper expenditures, to render easy the prosecution of the offender. With this end in view, it should receive a fair and liberal construction. The object sought to be obtained is important, and it should not be defeated by any narrow or technical ruling. At the same time, if such a thing is possible, the construction should be reasonable, so as not to prevent or unduly embarrass the conduct of political campaigns under our present system. * * *

The court then considers a hypothetical case of a treasurer who advances money to his lieutenants for various purposes, the latter in turn employing agents of their own; and asks how such a treasurer is to file true and complete statements and cover all the details with respect to his aids, or how he is to know of their entire operations. It continues—

> It may be said that the treasurer must personally supervise every payment made, or must make every payment himself. Not only is such a requirement obviously impractical, but the statute itself shows that such was not the intention of the legislature. * * * Its provisions [i. e., of the statute] are sufficient so that every purpose for which it was enacted can be accomplished. A complete system of publicity is provided. The treasurer is to certify as to every disbursement made directly from the funds of the committee by him or by any officer or agent. Such funds are under his control. He is bound to know what use has been made of them. He must give the date of such disbursement, the name of the person to whom it is made, and its object. This statement is a summary of the financial business of the committee. This is a public record on file with the secretary of state. It contains everything as to which the treasurer can truthfully testify.
>
> But he is not required to follow out in detail the use of this money by those to whom he has paid it for a specific purpose—and he can only pay it for such a purpose. * * * But the person, to whom the money is entrusted, may not use it for an illegal purpose. The payment to him may not be a mere evasion intended to cover a crime. For this reason he, also, is compelled to render to the treasurer a detailed account, showing the precise use made of it * * *.
>
> Under this system, it is perfectly easy for anyone interested to determine whether or not there has been wrongdoing * * *. A complete and thorough investigation is possible.

A succinct opinion of the satisfaction of not a few courts in the matter of a substantial compliance with the provisions of the law as to expense statements is found in another case in Kentucky in 1933, *Dempsey* v. *Cassady* (250 Ky. 810, 64 S. W. (2), 161), involving a primary election contest—some of the expenditures having been for vague purposes, and not remembered—where it was set forth:

> While the expense account does not conform to the technical requirements of the statute, there is nothing in the record to indicate evasion, corruption, or intentional violation of the law.

Similar opinions are expressed in the case of *Duff* v. *Salyers* in Kentucky in 1927 (220 Ky. 546, 295 S. W. 871), involving a contest in respect to the office of county judge; and in that of *State* v. *Board of Elections* in Ohio in 1914, involving mandamus proceedings in respect to the office of probate judge (3 O. App. 190, 20 O. C. C (n. s.) 190).

In the case of *Best* v. *Sidebottom* in Kentucky in 1937 (270 Ky. 423, 109 S. W. (2) 826), in which was involved contest proceedings in respect to a primary election for the office of State Senator it appeared that though only the sum of $474 had been expended by the successful candidate, the law permitting a sum not in excess of $500 for the office in question, there had been erroneously reported the sum of $603. When discovery was made of the error, there was a check-up of all the expenditures, and an amended and corrected statement was duly filed. By the court this supplementary statement was regarded as not in violation of the law, being satisfied if it was found to be true and accurate. The requirements of the law with respect to statements was declared to be directory only. After quoting from *Sparkman* v. *Saylor* (later considered) the court said:

> The intendment and purpose of the Corrupt Practices Act is to have for the reasons above-stated a real and true declaration and exposition made by the candidate before the primary election of his expenses incurred therein.[1]

The court concluded by commending the candidate for making the correction.

In *Heathco* v. *State* in Indiana in 1936 (209 Ind. 667, 199 N. E. 260), in *quo warranto* proceedings in respect to an election for a town trusteeship, it was held that a proper filing of a statement was presumed, there being nothing to indicate a failure in this regard.

In the case of *Merrick* v. *Porter* in California in 1932 (122 Cal. App. 344, 10 Pac. 138), involving a contest in respect to the mayorship of Los Angeles, an improper and insufficient statement of receipts and expenditures in a primary election was held to be a misdemeanor only, and not a ground for contesting an election, the legislature having repealed the provision that failure to file a statement caused a forfeiture of the right to office of one elected thereto.

In the Federal case of *United States* v. *Cameron* in 1922 (282 Fed. 684), in a criminal prosecution of a candidate for the office of United States Senator in the State of Arizona, it was stated that while a candidate might receive contributions in any amount, he could make expenditures only within legal limitations; and that improper statements thereupon were not "material matters" as to perjury, with no violation of the law "in a criminal sense." It declared that the provisions of the statute with respect to the filing of statements in connection with primary elections did not apply to general elections for the office in question after the adoption of the Seventeenth Amendment to the Federal Constitution.

What is and is not required in statements is further indicated in a decision in Ohio in 1916, *State* v. *Long* (19 O. N. P. [n. s.], 29; 27 O. D. 560). Here an action had been brought by the prosecuting attorney in the city of Springfield on the ground that the statements with regard to a preceding election rendered by the Republican committee, the treasurer of the Democratic committee, and the president of an independent committee were severally lacking in the completeness

[1] See *post*, p. 47.

demanded by the law, the court being petitioned to issue an order to show cause why these statements were incomplete, and to determine whether such alleged incompleteness were intentional or unintentional. In comparing the statement of the Republican committee with the provisions embraced in the law, the court found that the address of each person mentioned and the date of each transaction were not recorded. It suggested that in an amended statement there be supplied such information and all other necessary information—though of the real addresses of the persons concerned there could be no doubt. The court also discovered three items of expenditures of $15, $12, and $16, denoted, respectively, as for "miscellaneous expenses," "election-day expenses,". and "sundry expenses." Holding this to be a sufficient characterization of them, it declared:

> Any one familiar with the conduct of an American election knows that the chairman of the committee in large cities has certain incidental expenses that would be impossible of itemization, not because they are vicious or obnoxious to the law, but because in the heat and hurry of an election, it would be impossible for any man * * * to keep a definite account of the small sundry expenses incident to his position.

The court furthermore pointed out that such expenditures, being made by an individual on behalf of the committee, were apparently allowed either in connection with the statement itself or in connection with the accounts of the committee. Additional cause for satisfaction with the items lay in the smallness of their amounts. As to an expenditure of $14 for cigars, the court held that whether this was legal or not was not a question before it, but only the bearing of it upon the completeness of the account. There was next considered an item of $570, there being named 57 persons to whom the sum of $10 each was paid for the use of workers, without the actual designation of the persons thus referred to. The court was of the opinion that this was all that there needed to be, saying that the statement should merely set forth the names of the persons receiving the money, it often being impossible to determine the real payees within the period specified for the rendering of the statement. With regard to a balance in hand of $6.38, the disposition of which failed to be disclosed, the court stated that this might yet be done. Towards the statement of the Democratic committee, a similar attitude was taken. An account of a payment of $125 for 41 workers should have added to it their addresses—the mention of one of them simply as a helper being regarded as sufficient. So far as concerned a payment for workers at a certain sum, the question, as with the previous payment for cigars, was, in case of a violation of the law, not one to be inquired into in the present instance. Commenting on the use of the term "worker" in the accounts rendered, the court declared that no further particularization was called for, the purpose being well enough understood in ordinary political practice. For dates not sufficiently referred to, full mention was directed. Lastly, with regard to the account of the independent committee, the court restated its views on the matter of full addresses and of the purposes of expenditures. Approval was given of a disbursement of $809, which was set down as for itemized advertising and agency service—though $125 for the latter purpose was expended after the election in question. Expenditures for postage and for stenography should, the court explained, be separately listed; and those for clerical help should indicate names of individuals con-

cerned and the amounts received by them. An expenditure then of $214 for "messenger service, delivering supplies, telephoning, distribution of literature, and some small meetings—no item in excess of $10"—was not considered explicit enough, there being further necessary a statement of the amounts paid to each person, with his address, and the dates of the respective transactions. The disposition of a balance of $171 was also to be given. The court furthermore took occasion to point out that the statute did not call for the itemization of expenditures of $10 or more, but only for vouchers to accompany all payments of such sums. The court, in conclusion, affirmed its belief that none of the omissions which had been shown were willful, and gave its permission for their due amendment.

In the matter of the possible omission of items of expense from statements, we have two other cases, in both of which is adopted a rather broad conception of what is proper in the way of expenditures—though both of them might perhaps equally well be considered in the discussion of the limitation of expenditures. In each the question is raised in respect to whether expenses incurred for "treating"—here consisting of liquor and tobacco—are to be included in the accounts to be rendered, and in each a negative view is taken by the courts. These cases came up in Pennsylvania, and apparently voice a conception different from that expressed in a case in this State on the same subject which we have previously considered. In the cases are involved proceedings instituted upon petition for the auditing of the accounts of candidates for membership in the State legislature, as provided for by the statute. In the first, *In re Candidate Price's Expense Account*, in 1907 (10 Del. 233, 33 Pa. C. C. 244, 16 D. R. 326), it was held that such treating need not be included in the election accounts on the ground that it was not itself in violation of the law, that it had always been a custom in the State, that it was usual and even conventional in American life, and that at times it was expected. Besides, the court found that there was no evidence to show that this treating had been one to influence the election, this being expressly disavowed by the candidate whenever the matter was mentioned.[1]

In the second case, *Kinney's Election Expense*, in 1909 (39 Pa. Sup. 195), it appeared that the total expenditures of the candidate amounted to $170. In this sum all the main items of expense, 48 in number, with only 4 in excess of $10, were included, with the exception of those for liquor and tobacco. The testimony as to the actual amount of small expenditures was conflicting. The court held that the statement as rendered embraced substantially all the expenses incurred, and was sufficient.

Similarly with respect to charges that in a statement of accounts certain matters are passed over, it has been held that generalizations will not be accepted, but only particular items—perhaps also to an extent at variance with the attitude on the subject which we have before noticed. In *Kiser's Account*, a Pennsylvania case in 1912 (21 D. R. 377, 60 Pitts. 292), where an accounting of the expenses of the treasurer of a county committee was requested, the petitioners were required to show in detail the items objected to and the grounds to objection, or the specific matters alleged to be omitted.

[1] See *Liebel's Case, ante*, p. 40.

In another Pennsylvania case, *Alter's Account*, already referred to (60 Pitts. 215, 39 Pa. C. C. 428, 21 D. R. 374), are given the reasons for this ruling.

> It seems very plain, however, that the act does not mean that the accountant shall come to the hearing prepared to substantiate by evidence every statement contained in his account, but only that he should be prepared to meet allegations of error or falsity so definitely made that the accountant might be prepared to answer them.

Finally, the courts may even go so far as to manifest a willingness to excuse a candidate for omissions in his statements which were not willfully made. In the case of *County Canvassing Board* v. *Lester* in Florida in 1928 (96 Fla. 484, 118 So. 201), involving a suit in respect to a primary election for the office of county commissioner, where there was not included mention of certain campaign workers, the court pointed out a distinction between "failure" and "willful refusal" in the matter of complete statements. The candidate, it said, was not responsible "unless [he] had knowledge of the falsity of the statement at the time he filed it, or the proven circumstances are such as to clearly impute such knowledge, or are clearly inconsistent with a lack of knowledge."

The next group of decisions relating to the proper preparation and filing of statements of receipts and disbursements is concerned with the time within which they are to be rendered. The question presented here is in the main whether the provisions relating to such time are to be regarded as mandatory, or as directory only—that is, whether failure to comply altogether in keeping with the provisions will or will not incur the full punishment of the law. On this point there seems to prevail on the part of the courts the same general policy which we have found before. There is an inclination to interpret the acts according to what are deemed to be reasonable standards, with little disposition to penalize severely unimportant acts or acts committed in ignorance of the statute and without want of good faith. Though in matters touching the substance of the statute strict compliance may be insisted upon, in matters that may be held as rather subsidiary a less strict compliance will be tolerated, especially if the spirit of the statute is not thereby defeated. Stated specifically, while the words of the law requiring the filing of statements are looked upon as preemptory, the words as to the time of such filing are to be taken in a manner to further the general purposes of the law, without necessitating implicit observance of every detail. To put the matter differently, the actual filing may be said to be of the essence of compliance, but the time of such filing not. This attitude is likely to be all the more in evidence in case forfeiture of office is included in the punishment prescribed, in large part for the reason that forfeitures are not favored in law, and especially where another penalty is attached for violation.

The view of the courts is well expressed in *Sparkman* v. *Saylor*, a Kentucky case in 1918 (180 Ky. 260, 202 S. W. 649), where, in mandamus proceedings to compel a board of election commissioners to issue a certificate of election to a successful candidate for the office of justice of the peace, it appeared that such candidate had filed a statement of his expenses only 7 days prior to the election, and not 15 days, as required by the law. By the court the provision regarding

the time of such filing was held to be directory only, and not mandatory. The reasons for this view may be quoted:

> The purposes of the act are thus clearly set forth in its title * * * which is conclusive, as is the act as a whole, of a legislative intent to insure fair and pure elections, free from corrupting influences, at which the voluntary choice of the majority or plurality of the qualified electors might be ascertained. * * * Unquestionably, the act is mandatory, insofar as it provides for the filing by all candidates of a true and accurate statement of expenses, covering every specified item, both before and after the election, because, until he does so, the successful candidate cannot get a certificate of election, qualify, or receive the emoluments of his office. And the legislative intent therefor was doubtless twofold: First, that voters, from an inspection of the pre-election statement which was required to be open to public inspection, might understand the influences being exerted on behalf of the several candidates; and, second, that an election might be annulled upon a contest under certain conditions which had been procured by corrupt practices, evidence of which would be disclosed or indicated by one or the other or both of the required statements. And it is quite apparent that the pre-election statement, insofar as it is intended to enlighten the voter, is reduced in value in proportion to the time its filing precedes the election, so long as time is allowed in which to give publicity to its contents throughout the district for which the election is held; and that, in an election for an office such as is involved here, a statement filed on the fifteenth day before the election could be of no additional practical value whatever, either to the voter in determining how he should vote, or to avoid the consequences of corruption upon the part of a successful candidate by contest instituted thereafter, over a statement filed a less number of days before the election, because in a magisterial district election corrupting influences would scarcely ever have been inaugurated that far in advance of the election, even where they were contemplated, and but a few days would suffice to give publicity to a statement throughout the district; while in an election for a State office, such influences, if they are to be effective, might by that date have been manifested in part, at least, by such a statement, and a much longer time would be required for effective publicity than in a smaller district. Yet the legislature made the same provisions as to time of filing the statements with reference to all candidates, whether running in the whole State or in the smallest subdivision thereof. So, it seems to us, the provision as to the time for filing the pre-election statement cannot be held to be mandatory upon any theory of the purposes intended to be accomplished thereby, and every reason exists for holding it directory merely in such respect if the terms of the act will permit, since, in the absence of corrupt practices, after a reasonable and substantial compliance with the provisions of the act by the candidate, no reason whatever exists for denying to him the fruits of such victory, nor to the voters the officer of their choice; and we are extremely reluctant to do so upon doubtful or less than clear and unmistakable authority. * * *
>
> While the section of the statute now before us provides that the pre-election statement "shall" be filed on the fifteenth day before the election, and while it is a general rule of construction that, when used in the statute, "the words 'shall' and 'must' are imperative, operating to impose a duty which may be enforced" * * *, it is apparent * * *, that there are many exceptions to this general rule, depending upon the intention of the legislature, to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other. In our judgment, upon such consideration of the statute, the word "shall," as here used, is mandatory as to the filing of the statement, but directory only as to the time when it shall be filed.

The court is further influenced in its decision by the use of the word "until" in other sections of the act relating to the filing of statements, in connection with the issuing of certificates of election, the qualifying of candidates, and the receiving of compensation, which are believed to indicate a legislative intention to refer such penalization only to the failure to file a statement, and not to the actual time of filing. With regard to the section of the act which provides for contest proceedings for violation of the law, the court, after pointing out that such proceedings are not involved in the present issue, and that election

commissioners have no judicial authority in the matter, proceeds as follows:

> In holding that the statute is mandatory in requiring a candidate to file a pre-election and post-election statement of expenditures and is directory merely as to the time when such statements shall be filed, we do not mean that a candidate must not reasonably and substantially comply with the provisions of the Act as to the time of filing his pre-election or post-election statements, for this he must do, and his failure to do so will be a ground for contest. * * *
>
> Even if we consider appellant Colwell's intervening petition as a contest, it was incumbent upon him to plead facts showing that appellee had failed reasonably and substantially to comply with the requirement to file a pre-election statement, and we do not consider, in an election confined to a simple allegation that the pre-election statement was filed by the appellee upon the seventh rather than the fifteenth day before the election, sufficient for the purpose, since apparently and presumably in such an election a filing of the statement on the seventh day before the election would serve every imaginable purpose as fully and as completely as if filed upon the earlier date, and was therefore a reasonable and substantial compliance with the directory provisions of the law.

The ruling here is followed in several other decisions in this State—*Felts* v. *Edwards*, *Hardy* v. *Russell*, and *Bailey* v. *Stewart*, in 1918 (181 Ky. 287, 204 S. W. 145), all in contest proceedings in respect to certain county offices; *Hoskins* v. *McGuire* in 1922 (194 Ky. 785, 241 S. W. 55), involving an election contest in respect to the office of mayor and councilmen in a certain city; and *Ridings* v. *Jones* in 1926 (213 Ky, 810, 281 S. W. 999), involving contest proceedings in respect to membership in a county board of education.

In other Commonwealths a like view prevails. In the case of *Commonwealth* v. *Schrotnick* in Pennsylvania in 1913 (240 Pa. St. 57, 87 Atl. 280), a candidate who had been elected to membership in a certain borough council had failed to file a statement of his expenses within the time prescribed in the statute; and on the ground that he was thereby disqualified, he was denied admittance into that body. The council also declared that a vacancy had been created, and proceeded to fill the office by the selection of another person. It appeared in the action that the relator (the candidate who had been barred from office) had failed to file his statement because of an erroneous belief that none was necessary when expenses were less than $50. As soon as he learned the contrary, he at once filed a statement, which was submitted by the time that the council had organized. The council, notwithstanding, still refused to admit him, declaring that his seat had been definitely forfeited. The court, however, took a different view of the matter. It pointed out that the law provided only that no oath of office might be administered and that no successful candidate might enter upon office until the required statement was filed; and that though 30 days were prescribed as the time in which this was to be filed, the act did not provide forfeiture of office for failure to do so. The court reasoned that the language of the statute also did not imply a forfeiture, as it stated that no salary was to be paid and no entry upon office was to be made until the statement was rendered. It believed that such was the contemplation of the legislature, and hence that the law was but directory, and not mandatory. It said:

> These provisions plainly indicate that the legislature did not contemplate a forfeiture of office because of the failure to file the account in time, but that the person thus neglecting to comply with the requirements of the Act should not enter upon the duties of office or draw any salary until he had filed his sworn statement. The prohibition against entering upon the duties of office "until he

has filed such account" contains a plain inference that he may do so after he has filed his account.

The same reasoning applied, in the opinion of the court, to the provisions regarding the salary to be paid after the account was rendered. The court also called attention to the fact that the council had no power to declare a vacancy in its membership.

In a West Virginia case in 1921, *State* v. *Gilmer County Court* (87 W. Va. 437, 105 S. E. 693), in mandamus proceedings with respect to the office of a county sheriff, the court, in declaring that one was not permanently disqualified by the statute who was tardy in filing his expense account, but that he could not assume office till this was done, announced:

> These requirements and qualifications of the right of a successful candidate to be inducted into office, however, do not fully or finally express the legislative mind or purpose with reference to the right to qualify to discharge the duties of such office. * * * [After reference to the provision that "until" a candidate shall have fulfilled certain requirements.] It is the universal rule, and when applied in this instance, as it must be, the provision quoted cannot be ignored. * * * The statute when read and considered in its entirety manifests no express or implied determination to disqualify permanently one who is tardy in that respect from discharging the functions and receiving the emoluments of the office to which he has been elected.

This view is believed by the court to be upheld in the provisions of the statute as to possible fine or imprisonment for failure to comply with its provisions. (In *State* v. *Board of Canvassers*, 87 W. Va. 472, 105 S. E. 695, 1921, the decision is upon the same issues.)

In a New York case in 1902, *In re Drury* (39 Misc. 288, 79 N. Y. Supp. 498), it was charged, among other things, in an action that a candidate who had been elected to the office of town clerk had failed to file a statement of expenses within the statutory limit. The court held that no forfeiture of office existed "in the absence of judicial action declaring it forfeited." The court considered the application of the statute to be directory only, basing its reasoning in part upon the analogy to such matters as the filing of bonds by officers-elect and the like, in respect to which, according to the weight of opinion, the office is not forfeited on the failure of compliance, but the right to assume it only suspended.

A like view is taken by the courts in Colorado, in the case of *Board of Trustees* v. *People* in 1899 (13 Colo. App. 553, 59 Pac. 72), involving mandamus proceedings in connection with an attempt to remove from office the mayor of a certain city in the State on the ground, among other things, that he had failed to file a statement of his expenses within the time prescribed by the law. The court held that this provision was merely directory, and that inasmuch as the act prescribed a penalty for the failure to file the statement at all, it was not absolutely necessary that it be filed within the exact time designated.

In a case in the State of Washington in 1908, *State* v. *Nichols* (50 Wash. 508, 97 Pac. 728), where the constitutionality of the law was attacked in connection with an original application for a writ of prohibition or mandamus to the secretary of state with respect to its carrying out, it was held, among other things, that though the sections were indefinite as to the time when a statement should be rendered, "in such cases the rule is that they must be filed in a reasonable time."

The rule is further illustrated in an Ohio decision in 1900, *State* v. *Jaquis* (11 O. C. D. 91). Here an election petition had been brought to oust from office a candidate who had been elected a member of the board of education for a certain district of the State because he had failed to file a statement of expenses within 10 days after the election, as required by the law. For this failure he was subject also to a fine of not more than $1,000. It appeared that the relator (the successful candidate) had prepared a statement of his nomination expenses, and had left it with a notary public 4 or 5 days before the time prescribed by the statute, with instructions to turn it over to the proper officer as directed by the law. This statement was found to have been actually filed 2 days later. The statement with regard to election expenses was mailed on the tenth day after the election, but was not actually filed till the eleventh day. The court took a broad view of the matter, and did not desire to see the candidate lose his office on a mere technicality. It accordingly held that he was not disqualified for office. It pointed to the statute itself, which provided that such acts as merited forfeiture or disqualification of a candidate must be done "with intent to secure or promote his nomination or election"; and in the present instance it found this not to be the case. The court was further influenced to its decision by the fact that the candidate had fully qualified by the time that he was ready to assume office. It also called attention to the general rule that when a penalty is attached for a violation of a statute, the office is not usually forfeited.

A similar case is that of *Commonwealth* v. *Vernon* in Pennsylvania in 1907 (33 Pa. C. C. 481, 55 Pa. L. J. 27, 17 D. R. 229). Here a candidate who had been duly elected a member of a borough council had inadvertently neglected to sign his name to his declaration that his total expenses had not exceeded $50, as was required by the statute within 30 days after the election; and 46 days after such election, when his attention was called to the matter, he made the necessary amendment. In *quo warranto* proceedings to oust him from office because of his original failure, the court decided that he should not be so penalized, especially as no other candidate was claiming the office. It held that the provision of the law was directory only, and not mandatory; and believed that the candidate had committed no other offense, had acted in good faith, and had considered that he had done his full duty. The court went on:

> Generally speaking, we must presume that the Legislature did not pass the Act of 1906 or intend it to be so interpreted as to thwart the will of the people. * * *
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> To hold under the circumstances that G. N. Vernon was never legally inducted into office or that he should be now evicted from an office which he holds and which no one else claims, would certainly not only unjustly thwart the will of the people honestly expressed but would be doing a wrong to G. N. Vernon. * * *. We do nor believe that the direction of the Act to file the oath within thirty days is mandatory; it is only directory; and if a man whom the people elected to office, and his election is conceded to be honest, and he has complied with the requirements of the Act of 1906 (in everything except that he has been tardy in his compliance), and no one is claiming his office, the court will not on *quo warranto* issued at the suggestion of the district attorney evict such a man from office. In a proceeding like this, possession alone—the defendant being a *de facto* officer—is a good defense against a suggestion of the district attorney that contains no allegation of violations of law other than those that are tech-

nical and which were unintentional and wronged neither the commonwealth nor any of its citizens.[1]

In the case of *Coutremarsh* v. *Metcalf* in New Hampshire in 1934 (87 N. H. 127, 175 Atl. 173), involving a bill of equity for the disqualification of a candidate for Representative in Congress, for noncompliance with the provisions of the statute requiring two statements of candidates in connection with a primary election, one 3 days before it and the other 15 days after it. Here the candidate in question had originally filed only the latter statement, being advised by the attorney general of the State as to it alone, and being in ignorance with respect to the former; as soon, however, as he learned that both were necessary, he took what action that he could, but too late to meet the statutory requirements. The court in absolving him of wrongdoing, declared that there had been no element of criminal intent present. The law, furthermore, it said, spoke of illegal expenditures being of "serious and deliberate nature"; such was not the case in the present instance, it believed. With reference to the provision of the statute that "until" proper statements had been prepared, candidates were not eligible for office, the court stated:

> This provision clearly indicates that failure to file the required statements at the times specified is not necessarily a cause for disqualification, and that, if no intent to violate the statute is shown, the default may be cured by subsequent filing.

In the case of *State* v. *Hodge* in Missouri in 1928 (320 Mo. 877, 8 S. W. (2) 881), in *quo warranto* proceedings in respect to a superintendency of schools, it appeared that a candidate had failed to file the prescribed statement within the 30 days after the election as required, but had done so before the filing of an information as to his default. The court held that, inasmuch as the statute, which forbade one to enter office without the filing of a statement, did not provide forfeiture of office for such default, the candidate was entitled to the office. The statute, it said, was of penal nature and was to be strictly construed.

In one case we have the pronouncements of the courts as to what deviations are permissible with respect to the time designated for the filing of statements, namely, that of *Heiskell* v. *Lowe* (126 Tenn. 475, 153 S. W. 284), already considered. Here the statute required the publication of the expenditures of a candidate in a daily newspaper at least 1 day before the election and the day after the election. The court held that the law was satisfied where there had been only one publication made on the day of the election, and 3 days thereafter, inasmuch as the law had not gone into effect before this time, and was not retroactive.

Akin to the foregoing decisions are decisions concerned with the interpretation of the time during which a candidacy for an office exists. On this point the courts are not in accord. One view is that a person does not become a candidate in the true and legal sense of the word until he directly performs the acts required by the law to render him so. Another view is that a person is a candidate for all the time preceding the election in which he is voted upon, so far as his candidacy may have been advanced in any manner in such time.

[1] It is unlawful, according to the opinion of the attorney general of Pennsylvania, to administer the oath of office to a member of the State legislature until a statement is filed that election expenses have not exceeded $50, if that is the case. If the oath is administered, the jurisdiction of the administering officer is ended, and such officer cannot pass upon the question. *Accounts of Election Expenses* (61 Pitts. 151, 22 D. R. 72, 1913). See also *Peter's Case* (40 Pa. C. C. 695, 1913); *Commonwealth* v. *Town Council* (4 Mun. L. Rep. 101, 28 Mont'g. 185, 1912).

A decision holding the former conception is that of *State* v. *Bates* in Minnesota in 1907 (102 Minn. 104, 112 N. W. 1026, 12 Ann. Cas. 105). In contest proceedings instituted to oust the respondent from the office of sheriff in one of the counties of the State, it appeared that an agreement had been made between him and another person whereby the latter, for a consideration of $450, was to enter the race for this office, but was to withdraw therefrom on the last day for filing names. By this plan it was hoped to divide the strength of an opposing candidate. The agreement was carried out, and the respondent, who had devised the scheme, won the election. In the statement of expenses rendered by him as required by the law there was no mention of the amount which he had thus paid to his confederate. The only question which the court held to be before it was whether the respondent was a candidate at the time that the agreement was made. If he were, then this item should have been included; if he were not, then there was no need for it. The conclusion reached was that the respondent was not a candidate at the time, and hence that it was not necessary for him to make mention of this expense. The court reasoned that one did not become a candidate in the true sense of the word till an affidavit of his candidacy was actually filed, and that the law therefore did not take cognizance of disbursements incurred prior thereto. The opinion of the court is thus given:

> While it is clear, however, a man may be and usually is a candidate long before he is, and although he may never be, a nominee, the time is wholly uncertain when he becomes a candidate, in the absence of statutory determination of such time. He may in his own mind be in that venturesome state before anyone else is apprized of such intention, and in such case his ambition would not make him a candidate. Nor does he become such if he merely counsels with his friends on the subject. His candidacy must be manifested by some act of his own, the gist of which is that he holds himself out as a candidate. Very often he crosses the Rubicon when he publishes his formal announcement in the local press, or to an organization, or in a public manner. This, however, is not ordinarily necessary. He may become a candidate by soliciting votes, without any declaration. * * *
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> It is essential to its successful administration [i. e., of the Act] that the time at which its provisions are to go into effect should be definitely determined. In view of the indefiniteness as to such time under the ordinary convention system of nomination, the legislature may reasonably be regarded as having intended to remedy this defect when it legislated on the subject of direct primaries.

The court then makes reference to the provisions of the law in connection with primary elections, which require the filing of an affidavit of one's candidacy 20 days before the primary election, together with the payment of the prescribed fee. The court proceeds:

> In case of a nomination by direct primary election, the statute definitely prescribes the time [when one becomes a candidate], viz. when the eligible person files the affidavit of his intention. As to expenses after that date, he must file a verified statement, but as to those which were incurred before it he is not required so to do. * * *
>
> This construction is subject to the objection that it might enable the office seeker to expend large sums of money to help him secure a nomination, and, by filing as late as the law allows, to escape its penalties, and in effect to evade its provisions. The time of filing is, however, so long before the primary election, and that time so long before the actual election, as to make that evil seem remote. * * * Before he becomes such a candidate, he is not within the provisions of the corrupt practices Act.

In Idaho the opposite view is taken as to the time when a candidacy begins, and the doctrine of the foregoing case is expressly denied. In this case—one already cited, namely, *Adams* v. *Lansdon* (18 Idaho 483, 110 Pac. 280)—it was held, among other things, that although

the corrupt practices statutory enactment did not exactly define the time when a candicacy was supposed to begin, yet the words in a certain clause in one of the sections reading: "*Provided*, That no candidate for nomination to any office at any primary held under the provisions of this Act shall expend for personal expenses *or at all* in order to aid or promote his nomination to such office more than 15 percent of the yearly compensation or salary attached to such office" were so strong that they could be taken only as applying to all preceding events, and hence that there could be no real limitation as to time. The court also took into special consideration the intent of the statute, which was to prevent large expenditures. A candidacy was therefore reckoned to commence when expenditures began to be made in different ways for the purpose of furthering it.

Note is also taken that the law provides for other expenses, as for fees and personal expenses. The court announces through Sullivan, C. J.:

> I am not in accord with that statement [*i. e.*, of the Minnesota decision], for it is well known that candidates for nomination at primaries may expend thousands of dollars in promoting their nomination, and have their political machinery in such perfect running order that no further expenditures of money will be required after the nomination papers are filed to keep it running effectively until the last vote is cast at the primary election. * * * To hold that a person may legally expend thousands of dollars in promoting his nomination to an office so long as he does it prior to the date of filing his nomination papers would permit him to do just what said law was intended to prohibit him from doing. It was not the legislative intention to permit a candidate to debauch the electorate and press of the State, if it were possible to do so by a large expenditure of money, provided he did it thirty days before the primary election. The intention was to prohibit a large expenditure of money, or what is called a checkbook campaign, in procuring the nomination of any candidate, whether the expenditure is made either before or after the filing of the nomination papers.

Attention is, moreover, called to the fact that space is left on the ballot in which to write in the name of a candidate, which further shows the intent of the legislature that the law is to have an application extending far back. The court further states:

> So, under our primary law, a person is considered to be, and is a candidate for an office when he begins to seek a nomination for that office, and if we are to give the narrow construction contended for by counsel to the term "candidate," the very object and purpose of the statute would be defeated, and a candidate might resort to all manner of bribery, promises, and expenditures of money in procuring his nomination up to the time he filed his nomination papers, and if he should after that time not commit any bribery, not make any promises, and not make any expenditures of money in aid or promotion of his nomination, he would wholly evade the penal provisions of said statute. * * *
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> So, under our primary election law, if a candidate were permitted to expend any amount of money he desired to expend prior to the date of filing his nomination papers, and only had to account for the money that he had expended between the filing of said papers and the primary election, there would be no motive for him to violate the law. A person seeking a nomination under our primary election law for an office becomes a candidate whenever he begins to lay his plans to aid or promote his nomination. Any other construction placed upon said Act would be contrary to the letter as well as to the spirit of said Act, for the clear intention is to bring every person seeking a nomination at a primary election within the prohibitory provisions of said Act just as soon as he does some overt act or thing in promoting his candidacy or in aid or promotion of his nomination.

Through another judge, Aitshie, J., who holds that the time within which such expenditures may be made is "wholly unlimited," it is declared:

When a man is spending money in employing and sending out workers, or perfecting an organization, or advertising and exploiting himself, or influencing public opinion in his favor or against an opponent, or in numerous other ways that present themselves to the office-seeker, for the purpose of increasing and enhancing his ultimate chances for nomination for a given office, he is for all practical purposes a "candidate" for such nomination.

A third case with respect to the time that a candidacy begins has reference to the question whether one announcing himself to be a candidate after the time prescribed by the law for the filing of the first statement of expenses becomes thereby a candidate relating back to that time. The case is that of *State* v. *Patterson* in Florida in 1914 (67 Fla. 499, 65 So. 659), in which the relator (the candidate) sought by mandamus proceedings to have his name placed upon the ballot in a primary election as candidate for the office of member of the board of control of public institutions, this having been denied to him by the county commissioners of a certain county of the State on the ground that he had failed to file a statement of his expenses 25 days before such election, as was required by the statute. To this the relator replied that he had not become a candidate until 21 days prior to the election, and that therefore he was *not* a candidate at the time specified in the statute for the filing of statements—25 days before the election. He also stated that the next day after he did in fact become a candidate, he proceeded to file a statement in regard to certain matters required by a different act, namely, in regard to his qualifications and filing fee, which were prerequisite to the appearance of his name upon the ballot. The court held that in such circumstances as these the candidate was not compelled to have filed the statement of expenses in order to become a due candidate. It believed it to be the legislative intent that the provisions of the corrupt practices act in regard to the filing of statements 25 days before the election should apply only to persons who were actually candidates at such time. If one becomes a candidate thereafter, he is required to do all that the law otherwise demands; but he is not required to file a statement with respect to a time when he is in fact not a candidate.

In a case already considered, *State* v. *Swanson* (— Neb. —, 291 N. W. 481), the claim that a candidate was not before the public in that capacity when his statement was made, and did not become so until the expiration of the 10-day period for filing possible objections to his candidacy, received short shrift from the court. It declared that "such a construction would defeat the purposes of the act" and that one "becomes a candidate when he announces," being so from that time on and accordingly within the provisions of the corrupt practices law.

Along somewhat similar lines are decisions in cases where names are placed upon ballots by petition. In *Bingham* v. *Johnson* in Kentucky in 1922 (193 Ky. 753, 237 S. W. 1077), where an election of a successful candidate for the office of justice of the peace in one of the counties was alleged to be void because of his failure to file a preelection statement of his expenses according to the law. This candidate had run independently, not being nominated in a primary election, but having his name placed on the ballot by petition; and had become a candidate less than 15 days before the election, the time fixed for filing the preelection statement. In declaring that the law was fulfilled as to such

candidate when he had filed simply his post-election statement, the court said:

> The statute was evidently intended to apply to a candidate who was such at least 15 days previous to the final election and not to one who thereafter became a candidate. If such statute should apply to a candidate who became such less than 15 days before the final election, a person desiring to become such would be entirely precluded, because it would be impossible for him literally to comply with the statute, and such we do not think was the intention of the General Assembly, as it authorized voters to legally vote for any person they chose, and from the further fact that the legislature would be without power to exclude any eligible person as a candidate, although it might exclude such from using the machinery provided for obtaining a place on the ballot, without compliance on his part with the requirements. * * * It is not conceivable that the legislature intended that the law applied to a candidate who could not comply literally, and after all it is conceived that the intention of the legislature was that the act, so far as it requires a pre-election statement, applies only to one who was a candidate on the fifteenth day before the election, and that it was intended that he should file his pre-election expense statement on that day in the absence of any untoward circumstance occurring.[1]

Another case is that of *Brooks* v. *Kerby* in Arizona in 1936 (48 Ariz. 194, 60 Pac. (2) 1074), where there were involved mandamus proceedings to compel the secretary of state to place on the ballot the name of a candidate for the office of State tax commissioner, according to the statute which permitted such action by petition, in consequence of his failure to file an expense account in the primary election. In pronouncing in his favor, the court declared that the provision of the corrupt practices law referred to was in reference to regular primary elections, and did not apply in the present instance. "We think, therefore," it said, "that it is both unnecessary and improper for him even to attempt to file an expense account under those sections."

In the case of *Judd* v. *Polk* in Kentucky in 1937 (267 Ky. 408, 102 S. W. (2), 325), which was a private action to recover damages for the failure to place on the ballot the name of a candidate for surveyor, he being unopposed for the office, it was said by the court, among other things, that the neglect on his part to file an expense account was not a good defense.

Another matter for attention relates to the legal depository of statements. In a case in Kentucky in 1922, where the language of the statute appears to be vague and ambiguous with regard to the officer with whom are to be filed expense statements, a broad view is taken by the court, which seeks to discover the legislative intendment. This is the case of *Hoskins* v. *McGuire* (194 Ky. 785, 241 S. W. 55), one already considered, involving contest proceedings with respect to the office of mayor and councilmen in one of the cities, where the statute speaks of filing pre-election and post-election statements, both for primary and general elections, with certain officers, including the officer with whom are filed nomination papers, the chairman of the board of elections, the county clerk, and the secretary of state. The court, characterizing "the language of the statute [as] so complicated and involved" that it was difficult to discover its meaning, stated that a candidate had a choice with the county clerk, sheriff, or the secretary of state—pre-election statements presumably with the clerk, to make them available for public inspection, and

[1] In this case it was also decided that the provision of the act in question, requiring pre-election statements to be filed on the fifteenth day before an election, was not affected by an amendment of 1918 which purported in the title to change "on" to "on or before," inasmuch as the amending act itself failed to incorporate the intended change, and that in consequence the original act remained in force.

post-election with the sheriff (the chairman of the board issuing election certificates).

Finally, we have the expression of opinion as to the situation when statements fail altogether to be rendered. The general principle is that the filing of a statement is imperative, and no excuse may be accepted for failure in this regard. Such is the pronouncement in *McKinney* v. *Barker*, a Kentucky case in 1918 (180 Ky. 526, 203 S. W. 303, L. R. A. 1918 E 581), where suit had been brought to direct a canvassing board to award a certificate of election to a successful candidate for the office of justice of the peace, which certificate had been withheld because of his omission to file a statement of his expenses at all, as was required by the statute. The defense that this had not been done for the reason that there had been no expenses whatever, and for that reason an account was believed to be unnecessary, was of no avail. Said the court:

> It is not a sufficient excuse for a failure to file it [the statement] that the candidate had spent no money in his campaign, because it is as necessary that such fact be divulged before the election as it is to make known sums that had been spent, if any, for legitimate purposes. The same reasoning would justify a failure to file the certificate when the candidate, although he had used campaign funds, had done so within the limitations and for the purposes prescribed by the statute; i. e., that he had not violated the statute, and the necessity for the statement was removed.

A similar decision is rendered in Minnesota in 1919 in the case of *Dale* v. *Johnson* (143 Minn. 278, 173 N. W. 434), with respect to mandamus proceedings to compel the issuance of a certificate of election to a candidate for the office of county commissioner, this having been refused on the ground, among other things, that such candidate had failed to file a statement regarding his disbursement of the sum of $14.78, as required by the statute, which also expressly declared an officer to be guilty of an offense who in such circumstances issued a certificate of election.

Other decisions demanding a strict compliance with the law as to statements of expenses are *Board of Trustees* v. *Oller* in Kentucky in 1928 (226 Ky. 89, 10 S. W. (2) 615), involving contest proceedings in respect to a school trusteeship; *Halteman* v. *Grogan* in Kentucky in 1930 (233 Ky. 51, 24 S. W. (2) 921), involving an election contest in respect to a magistracy; and *State* v. *Board of Ballot Commissioners* in West Virginia in 1918 (82 W. Va. 75, 97 S. E. 284), in mandamus proceedings as to several offices. In *Berg* v. *Penttila* in Minnesota in 1928 (173 Minn. 512, 217 N. W. 935), in contest proceedings with respect to the office of county commissioner, charges of failure to file a financial statement as to election expenses were not regarded as in fact "trivial, unimportant, and limited in character," within the intendment of the law.

A qualification of this view exists in instances where there happens to be but one candidate for an office, a liberal attitude prevailing here. In a Kentucky case in 1919, *Lewis* v. *Stamper* (185 Ky. 183, 215 S. W. 35), injunction proceedings had been brought to enjoin the secretary of state from putting on the ballot for the general election the name of a candidate for the office of Representative in the State legislature, who had failed to file a statement within the time specified in the law, and who for this reason was claimed to have forfeited his right to office. It appeared that this candidate, who was the only

candidate for the office in question, and who had received the certificate of nomination 40 days before the primary election, had not thought it necessary to submit any pre-election statement. Twenty days after the primary election he filed a statement, thus complying with the provision of the statute as to post-election statements. The court dissolved the injunction applied for, regarding it as unnecessary for the candidate in these circumstances to file a statement previous to the primary election. It found the present case to differ from that of *Sparkman* v. *Saylor* and *McKinney* v. *Barker*, already considered, in which the filing of statements was held to be mandatory, but the time of such filing to be merely directory; and was of opinion that the corrupt practices law was not applicable to the present issue. After reviewing the provisions of the act, the court declared that it referred to persons who were candidates at *primary elections;* that the expression "before" in the phrase "before any caucus or convention, or at any primary" meant in or at a caucus or convention; and that the law did not contemplate that candidates were to file statements before (i. e., previously) in primary elections, whether or not there was opposition. Said the court:

> It was never intended that one who had become a candidate "before" (previous) any "caucus or convention," and who was not a candidate in the caucus or at the convention should file any preconvention statement, nor that any person who might declare himself a candidate previous to the primary election and who even went so far as to file his declaration as such candidate, should be required to file a statement of his expenses as such candidate if he did not run in and at said primary. We arrive at this conclusion in part by resorting to the general object and purpose of the Corrupt Practices Act. Persons who do not have opposition for nomination are not called upon to, and do not, "disburse, expend, or promise" any money or other thing of value to secure the nomination, and, therefore, there are no corrupt practices in such case; but when there is opposition and two or more candidates run, the danger arises that one or the other of them may resort to some unfair means to obtain the nomination, and in his zeal to accomplish his purpose, disburses, expends, or promises sums of money or other thing of value to influence and bring about his nomination, and this is the thing intended to be prevented by the statute under consideration.[1]

In a like case in Nevada in 1914, *State* v. *Brodigan* (37 Nev. 488, 143 Pac. 306), application was made for a writ of prohibition to keep the name of a candidate for the office of attorney general off the ballot for the reason that he had failed to file a statement of his expenses in the primary election as required by the law. The defense was that inasmuch as the candidate was the only one in the field, his rival having withdrawn from the race, a statement was not called for. The court adopted this view, holding that by such withdrawal he was left at once the nominee, and was not really a candidate for the nomination. It was in part moved to its decision by the fact that penalties and forfeitures are not favored by the law, the candidate being thus given the benefit of any doubt.

A somewhat analogous decision has relation to the absolute failure to submit statements on the part of persons who have assumed the duties of office, in a matter of general public interest. In *Schreckengost* v. *School District*, a Pennsylvania case in 1910 (11 Del. Co. R.

[1] The court also considered that a different holding would have been in conflict with the statutes relating to primary nomination papers. Decided jointly with this case were the cases of *Lewis* v. *Stamper* and *Lewis* v. *Nickell*. The committee of the political party to which the candidate in question belonged, in the counties affected, being apprehensive that no candidate of their party had been regularly nominated, appointed a different person to be their candidate in the ensuing general election. In proceedings to restrain the putting upon the ballot the name of such appointed person, the court held that the candidate first considered was the rightful candidate of the party, and that, there being no vacancy to be filled, the second person appointed was not the nominee.

482, 58 Pa. L. J. 393), a bill in equity was filed to enjoin the collection of a special tax levied by the school directors of a certain district for the erection of a new school building, one of the grounds being that such directors had failed to file statements as to their election expenses as required by law—one director with respect to the final election, and all but one of the directors with respect to their several nominations. The court did not regard this as the real issue involved; and following the general rules of law, held that the school directors were *de facto* officers, and that their acts were valid so far as they concerned the public and third persons.[1]

[1] In the opinion of the attorney general of Pennsylvania, all candidates in any election or convention under the law of that State must file expense statements if their receipts or expenditures exceed the sum of $500 *Primary Election Accounts* (35 Pa. C. C. 34, 18 D. R. 189, 1908).

CHAPTER V

DECISIONS RELATING TO PROPER DESIGNATION OF POLITICAL LITERATURE

What may receive initial attention in decisions relating to the proper designation of political literature is the matter of whether the constitutional guarantees as to free speech and writing are preserved when the legislature makes enactments of this character. Upon this issue some courts are willing to concede a limited abridgment of these rights in the public interests; other courts are unyielding, and will brook no interference with the safeguards surrounding such American privileges. In the case of *State* v. *Babst* in Ohio in 1922 (104 O. St. 167, 135 N. E. 525), where a conviction had been secured of a candidate for a certain office for violation of the provisions of the corrupt practices statute prohibiting the printing and circulating of political matter without the names of those responsible therefor, it was held that such a measure was not an abridgment of the guarantees set forth in the Constitution. The court, in affirming the law to be regulatory only and designed to prevent the abuse of the right of free speech, explains how various enactments of this nature have been placed on the statute books from the beginning of the Nation's life with judicial approval—"to protect the sovereign entity from the undermining influences of fraud, crime, and immorality." The court goes on to show that no partiality or discrimination is involved in the law, applying as it does to "any voter," that is, practically to any citizen. The intent of the law, it says, "we doubt not [is] for the purpose of making someone responsible for the abuse of the right [of free speech], to prevent unjustifiable, unwarranted, untrue, and anonymous statements."

In other decisions a stricter attitude is found to be taken. In a Pennsylvania case in 1902, *Commonwealth* v. *Rentschler* (26 Pa. C. C. 39, 11 D. R. 203, 8 Lack. Jur. 139), the constitutionality of the law was also attacked which allowed the publication of defamatory matter respecting a candidate only when signed by a political committee or by a registered voter, or when published in a newspaper which assumes responsibility therefor. This was an action in respect to an election for the office of director of the poor, in which it appeared that an anonymous circular had been distributed "reflecting upon the character or political actions" of a candidate, charging him in particular with official incompetency and dishonesty. The act which authorized the proceedings was alleged to be in conflict with the Constitution of the State in that it curtailed the right to write and publish freely; that it varied and in part set aside the accustomed *bona fides* and a reasonable belief in the truth of the charges; and that it infringed upon the functions of court and jury. These objections were sustained by the court. It held that freedom of speaking and writing was limited by the act, which "narrowed the right of originating and of originally putting forth any written or printed reflection upon a candidate" to the three classes specified therein, and denied it to others. Only to these classes is a reasonable belief in the truth of the charges permitted as a defense; and on the part of other persons disproof of malice or negligence is virtually forbidden, while the act undertakes to punish

them without regard to the question whether there is such reasonable ground. The statute furthermore provided that if a statement was found to be untrue, the disseminator thereof was guilty of libel, and liable to be punished therefor. In this way double punishment was created, a thing which the law abhorred. Finally, the court believed that the act violated the constitutional injunction that in all cases it is the province of a jury to determine the facts.

A special phase of the matter of possible constitutional protection of free speech in political literature relates to the privileges of circulars addressed to voters by civic leagues. The case here involved is that of *Ex parte Harrison* in Missouri in 1908 (212 Mo. 88, 110 S. W. 709, 126 Am. St. Rep. 557, 15 Ann. Cas. 709). A law had been enacted in this State which required leagues, committees, associations, or societies, incorporated or unincorporated, whose purpose was to investigate the character, fitness, and qualifications of candidates for office, to state in full in their reports or recommendations on what facts were based such reports or recommendations, with the names and addresses of their informants and the full information furnished. It was also required that 30 days after the election in question such organizations should submit statements of all moneys received by them and the sources from which they came, and of all expenditures, including the amounts expended for salaries and general expenses. Violation of any of these provisions constituted a misdemeanor, to be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 1 month nor more than 1 year, or by both such fine and imprisonment. A year after the law was enacted an officer of the Civic League of Kansas City, of which it was the custom to prepare reports regarding candidates for office, was charged with the violation of the act, and the matter came before the court on petition of such officer for discharge from arrest and imprisonment by the writ of habeas corpus. The court held the act to be unconstitutional, as being against the rights of free speech guaranteed by the Constitution, including the provision (Art II, sec. 14): "No law shall be passed impairing the freedom of speech; that every person shall be free to say, write, or publish whatever he will upon any subject, being responsible for all abuse of that liberty." Believing its position to be upheld by the current of American decisions, the court said:

> The constitutional liberty of free speech and of the free press grants the right to freely utter and publish whatever a citizen may desire, and to be protected in so doing, provided always that such publications are not blasphemous, obscene, seditious, or scandalous in their character, so that they may become an offense against the public and by their malice and falsehood injuriously affect the character, reputation, or pecuniary interest of individuals.

The court further declared that if publications did not come within the classes enumerated, the legislature had no power to prevent them. It also pointed out that the Civic League would be put to extra expense to comply with the statute, asserting that "anything which makes the exercise of a right more expensive or less convenient, more difficult or less effective, impairs that right."

Rather liberal views on the whole are taken toward the provisions of the laws requiring in political advertisements or political literature the identification of those responsible for their publication. Where the matter involved in the publication of political literature does not appear to be of great political consequence, the court may even go so far as not to encourage action upon it. In a case in Minnesota,

Englebert v. *Tuttle*, in 1932 (185 Minn. 608, 242 N. W. 425), there was involved an election contest in respect to the office of register of deeds in a certain county, where there had been failure in a political advertisement with a picture of the candidate in question, to state the exact amount paid therefor, there being instead the words, "regular advertising rates will be paid." The court, while believing that the provision of the corrupt practices law with regard to the amount paid or to be paid in connection with such advertising meant that the amount should be disclosed in dollars and cents, nevertheless held that such a precise declaration would not add to what one would learn by reading the filed statement, and that the present lack of correctness was only "trivial, unimportant, and limited in character," and was not sufficient to cause a forfeiture of office.

In the case of *Miske* v. *Fischer*, also in Minnesota in 1935 (193 Minn. 514, 259 N. W. 18), which was an election contest with respect to the office of constable, the court held that the omission on political cards of the names and addresses of the authors to be "trivial and unimportant," within the intendment of the statute.

On the other hand, in the case of *Finley* v. *State* in Alabama in 1938 (28 Ala. App. 151, 181 So. 123), where in a municipal election for the office of alderman there had been charge of violation of the statute requiring the affixing of names and addresses upon placards, bills, posters, etc., of those responsible for their issue, the indictment was found to be properly drawn. (Writ of certiorari denied, 236 Ala. 161, 181 So. 125.)

Another decision has to do with the interpretation of a law on a subject which is of peculiar wording, with several lines of reasoning adopted by the different members of the court. In the case of *State* v. *Hay*, in Washington in 1909 (51 Wash. 576, 99 Pac. 748), there had been instituted *quo warranto* proceedings to oust from office the Lieutenant Governor of the State because of the publication in a newspaper, prior to his nomination, of matter regarding his candidacy which was alleged to be in volation of the law. The particular offense charged was the publication of a photograph of himself over which were the words "Paid advertisement," and below which was the name of the candidate, with the words, "Candidate for the Republican nomination for the office of Lieutenant Governor." In one section of the corrupt practices act of the State it is declared: "No person shall be competent to qualify for any public office who shall have, prior to the holding of any primary election, paid, or promised or agreed to pay, either directly or through another, or in any manner whatsoever, to the owner, publisher, manager, or representative of any newspaper, any sum of money or other thing of value, for any article or published statement in a newspaper wherein the electors are advised or counseled to vote for such a candidate, or his fitness or qualifications for office are set forth, or his photograph or biography is published." In the following section it is stated that nothing is intended in the foregoing section to prevent newspapers or other periodicals from printing political articles for which payment is made, provided that the words "Paid advertisement" are conspicuously appended, but that it may not be understood as permitting payment for what is prohibited in that section.

The case was decided for the respondent (the Lieutenant Governor) by five of the seven judges. The majority decision, however, was reached by three separate processes of reasoning. By two of the

judges the language of the statute is recognized to be involved, and to be susceptible of the meaning contended for by the relator that the publication made by the respondent was cause for his disqualification for the office; but so far as punishment was to be inflicted for violation, the meaning was held to be, not the mere publication of a photograph, accompanied by a statement of who it was, but the accompaniment of the photograph with a published article or statement advising the voters. Inasmuch, therefore, as the respondent had done only the former, and not the latter, he was not guilty of an offense under the statute. With respect to the provisions contained in the second section, it was said to be the intent of the law to allow newspapers to sell space for political advertisements, when the fact was clearly shown, but not to permit candidates to advocate their own election. The object of this section was to prevent the newspapers from advocating for secret hire the election or defeat of candidates, but to authorize them openly to sell space. "But we think," these judges stated, "that these sections are not intended to disqualify a candidate who merely publishes his picture with the statement whom the picture represents." It should be added, however, that the judges were influenced to their view in some measure by two extraneous circumstances. The first was that previously to the primary election the attorney general of the State had rendered an opinion to the effect that publication of the announcement of a candidate, with or without his photograph, was not illegal, from which it was concluded that the respondent had acted in good faith. The second circumstance was that the penalty seemed very severe, it being felt that it should not attach unless the meaning of the act were altogether clear.

The two judges who gave the dissenting opinion took the opposite view of the meaning of the statute. They would read the act as a whole, and the two sections especially together, and would insist upon keeping in mind that the first of the two sections relates to candidates and the second to publishers. On this understanding, it appears that the publication of the photograph with the words appended was really a "statement" within the meaning and intent of the law. This view was reënforced by the consideration of the fact that in the "personal expenses" permitted to be made by a candidate in the first section, no mention is made of expenses for such a purpose.

Two of the judges who concurred in the majority opinion did so because "the statute is so cloudy and its meaning so uncertain" that it did not seem to them to be right to impose the severe penalties specified upon one who might possibly misinterpret it.

The remaining judge concurred in the majority decision though he agreed with the reasoning of the two dissenting judges who thought that the statute was of such import as to disqualify the respondent for violation. This judge, however, considered the act, so far as it incapacitated an offender from assuming office, to be unconstitutional. The Constitution contained the provision that "no person except a citizen or qualified elector of this State shall be eligible to hold any State office," whereas the statute was thought to impose a new test of eligibility. The present act, declared this judge, either added a new qualification, and was therefore unconstitutional, or added qualifications which were not reasonable or necessary for the conduct of the office. One section added a new test not contemplated,

and the legislature had no right to take such action as to disqualify candidates in the corrupt practices act. Said this judge:

> It cannot be denied that if the legislature has power to add new qualifications to those fixed by the Constitution, they must be *reasonable*. It must be within the spirit if not the letter of the Constitution.

The present provision was held not to be so:

> It puts a test of eligibility ("he shall not be competent to qualify") upon a successful candidate unknown to the law, and in no way tending to safeguard the privilege of the people to select officials possessing some recognized standard of fitness. The condition is arbitrary and unreasonable.

Judicial decisions are also directed to the provisions of the statutes of certain States requiring the public setting forth of any possible ownership or financial interest in newspapers which advocate the election of particular candidates. In *Trones* v. *Olson*, a Minnesota case in 1936 (197 Minn. 21, 265 N. W. 806, 103 A. L. R. 1419), there is involved a petition for the forfeiture of the election of the Governor of the State for his failure to file an affidavit of such matter, or to state the value of the space used therefor, as required by the law. It was found that the respondent (the candidate) had been a mere dues-paying member of a political association publishing a newspaper, had had no part in its policies, and had no financial interest in it; and that he had not requested the publication of the matter in question. It also appeared that he had made no request for use of the radio, and that its use was not of his initiative. Taking a liberal view of the intendment of the statute, the court upheld the respondent's claim to office. It stated that the provisions of the statute could not apply to the present case. Continuing, it said:

> [The law] cannot be so construed as to require every candidate for a public office, at the risk of forfeiture of office if elected, to ascertain and itemize in his verified expense account filed, the value of space devoted to his election in every newspaper and publication circulated within the territory wherein reside the electors whose duty calls on them to vote for or against him at such election. Such construction would be absurd.

In the somewhat similar case of *State* v. *Washburn* in Wisconsin in 1936 (223 Wis. 595, 270 N. W. 541), there was an action by the State to declare void the election of a candidate for mayor of a certain city who had failed to file the statutory declaration as to the nature and extent of his interest in a weekly newspaper. Here the defendant had actually been editor and publisher of the paper in question, and had large financial interests in it, circumstances which were generally known in the community where he lived. Political matter designed to influence voters had been published therein without indication of its source or of the payment therefor, as required by the statute. The court, in upholding the defendant's right to the office, took what it regarded as a reasonable, practical view of the situation. It believed that the voters were not greatly influenced by the failure to file the required information, being already acquainted with the fact of ownership. It declared:

> The failure of the defendant to comply with the statutory provision could have had no effect upon the electorate, and such failure is to be disregarded under the positive provisions of the statute.

The court was in part moved to its action by a later provision of the corrupt practices law which states that its interpretation is to be such as to give effect to the will of the voters.

The next kind of decisions relates to political matter of a defamatory nature respecting candidates, sometimes published in the form of circulars or other occasional literature, which fails to indicate the parties responsible for its publication, and which may be of so grave a nature as to constitute criminal libel, and of such character as not to come within any privileged category. In rendering decision upon these matters, the courts are largely influenced by the actual damage that has been done, especially against the aggrieved candidate.

In several decisions no great harm is found accomplished in this regard. In a case coming up in the State of Minnesota in 1915, *State* v. *Land* (130 Minn. 138, 153 N. W. 258), the question before the court was whether the publication of a charge that the candidate for office was being supported by certain corporations was libelous within the meaning of the statute. Proceedings had been brought against the defendant because of publication by him in a newspaper of the statement that a candidate for the office of Governor "has the backing of certain corporations in the State that are not in sympathy with the masses, and his candidacy should not appeal to the rank and file of the party." The court held such a charge not to be libelous *per se*. It asserted:

> It is not claimed that the article by insinuation, or otherwise, charges Mr. Lawler [the candidate] with any wrongdoing or the violation of the law; nor do we think it fairly open to such construction.

The court went on to state that it was improper to infer from such publication that the candidate sought contributions from corporations, saying:

> The fair reading of the article does not warrant the inference that such backing was even acceptable to Mr. Lawler, to say nothing of being by his procurement or request.

It declared its conviction that newspapers had the right to express their opinion on the merits of candidates and of public questions; and that there was nothing in the publication to expose one to public hatred, contempt, or ridicule.

In another case in Minnesota, *Effertz* v. *Schimelpfenig* in 1940 (— Minn. —, 291 N. W. (2) 286), involving contest proceedings with respect to the office of county auditor, it appeared that an anonymous letter, with contents that would otherwise have brought it within the provisions of the corrupt practices law, was received only by the opposing candidate, and was not distributed or circulated among the voters. Here it was held that no one was influenced by such action, as was required by the statute, and that therefore the statements made in the letter were not "material" to the extent demanded in the law.

In a somewhat different case in Wisconsin in 1938, *State* v. *Mitten* (227 Wis. 598, 278 N. W. 431), there was involved an action to declare void an election for the office of sheriff, to oust the incumbent (the successful candidate), and to declare the office vacant on the ground that he had brought false charges against and had attacked the moral character of his opponent. The court, in denying the ouster, declared that the false charges alleged were not within the contemplation of the statute, its provisions being limited only to statements of fact and not to mere comment (a letter, furthermore, alleged to have been written not being introduced into the evidence). Attention was

also called to the provision of the law that the will of the electorate was to be given effect so far as possible.

In one case the decision of the court had to do with defamatory matter directed, not so much against the candidate as an individual, but against a group of individuals of which the candidate was merely a member. This is the case of *Dart* v. *Erickson* in Minnesota in 1933 (188 Minn. 313, 248 N. W. 706), where there were involved contest proceedings in respect to a judgeship of a probate court. There had been attacks on an association of lawyers, of which the candidate concerned was a member, imputing dishonesty and other misconduct so serious as to be characterized by the court as "unmeasured vilification" and "unfounded in fact." Notwithstanding, the court held the charges to be directed against the supporters of the candidate, and not against the candidate himself; the charges were defamatory as to them, but not specifically so as to him, and not "reflecting" upon him personally. The court intimated that one may go very far in a political campaign provided an individual candidate is not the object of attack; other persons have always civil remedies at hand. Under a strict construction of the statute, the court held, the charges were "trivial, unimportant, and limited," and not "deliberate, serious, and material." In this case there was a strong dissenting opinion, the charges being regarded as of "irresistible implication."

In a case arising in Pennsylvania in 1896, *Commonwealth* v. *Rudy* (5 D. R. 270), it was held that charges in a political campaign that a candidate for membership in a city council had been guilty of corrupt voting and of other offenses are all proper and may be published if they are true. The State was required to prove that the charges are not only untrue, but also that they are negligently and maliciously untrue.

To be added to the foregoing in this connection is a Minnesota case already considered, *Harrison* v. *Nimocks* (119 Minn. 535, 137 N. W. 972). The basis of this action was the circulation of political matter which intimated that a certain unsuccessful candidate had been guilty of a crime. The publication failed to show on its face the name and address of its authors, or of the candidate who was to be benefited by it, as was required by the law in respect to all articles designed to influence voters. The court regarded the matter as one of intent, and held it to be a question of fact to be decided by the jury whether there had been an actual design to deceive the voters.

In other decisions the political attacks are regarded as of quite material or serious character, and deserving of due legal penalization. In a Minnesota case, *Olsen* v. *Billberg*, in 1915 (129 Minn. 160, 151 N. W. 550), the issue turned upon whether alleged defamatory charges made regarding a candidate were serious enough to come within the meaning of the corrupt practices act. Contest proceedings had been brought by a defeated candidate with respect to the election of a county superintendent of schools in one of the counties of the State, the law authorizing such a contest on the ground of "deliberate, serious, and material" violation of its provisions. It appeared that in the preceding campaign both candidates, the contestant and the contestee, had published matter respecting the other. The contestant had stated in newspapers certain facts which had been gathered from State educational officials regarding the contestee's

record. Thereupon the latter had replied with a statement charging, among other things, that the contestant's accusations "did not comply with the facts"; that they were "malicious"; that they were an act of political trickery"; and that her weapons were those of "slander and mud slinging." He also declared that the contestant had neglected to publish her own record for a period of ten years, so that a comparison might be made; and inquired if she would dare make it public. Finally, the contestee had asked: "Would she like to have the darker side of her private and official life made known"; and asserted that it was not proper for her school children to distribute literature and otherwise to assist her in her campaign. All this, the court said, in announcing its decision, had an effect upon the voter, leading him to believe that the certificate of the contestant had been secured in an underhanded manner, that her life possessed an unsavory side, and that she did not have the moral character to be in charge of the education of children. The statute, the court found, prohibited the making of false statements "intended or tending to affect any voting"; and insinuations were believed to be as bad as plain statements. The only question to be decided was whether the statements were "deliberate, serious, and material" within the meaning of the law; and the court held them to be so.

Another case in this State has to do with a similar issue. In *Hawley* v. *Wallace* in 1917 (137 Minn. 183, 163 N. W. 127) the election of a candidate for an aldermanship in the city of Minneapolis was contested on the ground that he had knowledge both of the circulation and of the character of a pamphlet, in which the contestor was accused of certain wrongful acts while in office The defense of the contestee was that he had not read such pamphlet. Whether or not he had really participated in its circulation, the court held to be a question of fact. The main charges in the pamphlet were: under the heading "An $847 Grab", that the contestor had benefited by the illegal sale of land; under "Another Attempted Grab," that he had used his influence in getting payment for a friend whose contract for certain work was not completed; under "Hawley Favors Service Corporations," that private corporations had benefited from the sale of certain land; that he had assisted political friends in the placing of city insurance; that he had been a party to the extravagant management of the health department; that he wanted to pay an exorbitant price for certain land for the city; and that he favored the public-service corporations in certain matters. These charges, the court decided, were false statements of specific facts, amounting to an open imputation of dishonesty, and were accordingly in violation of the law. As to what the statute did and did not permit, the court declared:

> The statute is directed against false statements relative to fact. It is not intended to prevent criticism of candidates for office nor to prevent deductions and arguments from their official conduct unfavorable to them. It does not reach criticism which is merely unfair or unjust. It does not reach false statements of specific facts. Many of the statements contained in the pamphlet were not untrue and many were not legally objectionable. There was a skeleton of truth in connection with nearly all of them, for Hawley was a member of the council and was concerned in the transactions of which the pamphlet purported to give an account. The charge throughout was that Hawley had been dishonest and unfaithful in the conduct of his office. No one could have misunderstood it. It was more than an insinuation. It was not all innuendo. There were direct statements and charges of fact. Insofar as the charges exceeded criticism and were statements of specific facts of wrongdoing, they were false

statements of facts. They were intended to affect voters at the election, and naturally tended to have that result, and they were not trivial or unimportant but were deliberate, serious, and material within the condemnation of sections 599 and 600 [of the law].

Still another in Minnesota is along lines but little different. In *Flaten* v. *Kvale* in 1920 (146 Minn. 463, 179 N. W. 213) contest proceedings had been brought, on a petition of the requisite number of voters, it being alleged that the contestee (Kvale) had not been duly nominated in a primary election for the office of Member of Congress. The offense complained of was to the effect that the contestee had in the preceding campaign put into circulation false statements tending to and intended to influence the voters, in violation of the corrupt practices law. The contestee, it was charged, had used the following language with respect to his opponent:

> Mr. Volstead's sneering allusion to my having preached on the miracle of the five loaves and two small fishes I consider plainly out of place in a statement of political principles. If, as I understand, Mr. Volstead is a pronounced atheist and opposed to the Bible, that is his affair. I have no quarrel with him on that score. Neither do I feel that I owe Mr. Volstead or any living mortal an apology for my faith in God and my adherence to the principles and precepts of the Nazarene.

It was contended on behalf of the contestee that he had heard statements to such effect, and believed them to be true. There was no proof, it was further offered in his defense, to show that any voters had been influenced by these statements. The article put forth was published in good faith, and was accordingly believed to be justified.

Copies of circulars containing the article to the number of 5,000 were mailed to voters. The trial court held that these circulars tended and were intended to influence voters, and thus constituted a deliberate, serious, and material violation of the law; and that they were untrue and were without excuse. In upholding the opinion of the lower court, the court declared:

> It can hardly be successfully contended that a charge made by a minister of the Gospel to followers of his faith that a particular candidate for office who seeks his support is an atheist and unbeliever in God would not have a material influence upon the voters to whom it was communicated.

In a case which came up in the State of Washington, the question at issue was the extent to which a newspaper was protected in the publishing of defamatory matter which was duly paid for, and was so indicated. This was the case of *McKillip* v. *Gray's Harbor Publishing Company* in 1918 (100 Wash. 657, 171 Pac. 1026), being a civil action for damages. Here there had been inserted in a newspaper owned by the defendant corporation an article marked "paid advertisement," provided by the opposing candidate, and signed by a number of names, which article charged that the plaintiff, who had been a candidate for a county superintendency of schools, had been guilty of "slander" and "lies," that he was "unworthy of office," and that he had employed "vicious methods." The plaintiff contended that such charges were false, and were known to be false; that they were malicious; and that they were intended to hold him up to hatred, contempt, ridicule, and obloquy, and to cause him the loss of social intercourse and of friends. These charges the court held to be slander *per se*. It denied equally the claim that they were privileged on general grounds, and the claim that they were specially privileged under the section of the corrupt practices statute which provided for "paid advertisements";

the first, because the liberty of the press did not give it free license to publish falsehoods; and, the second, because there was nothing in the corrupt practices measure to counteract the usual protection allowed to one's good name, payment for defamatory matter by a third party being no excuse.

A decision has been rendered with regard to the provision found in the corrupt practices of a few States, requiring that opportunity be given to a candidate who is attacked shortly before an election, to make reply. This is the case of *Ex parte Hawthorne* in Florida in 1934 (116 Fla. 608, 156 So. 619, 96 A. L. R. 572), in habeas corpus proceedings in connection with the alleged violation of that provision of the statute which made it unlawful to attack a candidate within 18 days of an election unless there were served upon him a copy of the charges. The court, in a liberal interpretation of the statute, declared that it did not apply to oral statements on the public forum, nor to publications in newspapers, nor to radio addresses, but only to matter in writing or to be delivered from hand to hand when there would be no opportunity for defense. It was intended to restrain secretly prepared charges and unannounced publications, and to promote fair play, such enactment being within the police power of the State. The court continued:

> The gist of the statute is to be found in the requirement of reasonable notice of attacks and charges designed to be put afloat for public circulation in a form not likely to be readily found out by the attacked candidate. The public forum or the speaker's platform and the ordinary medium of the press as a means of editorial expression is sufficiently public to make the service of notice of charges and attacks made by such ordinary media of publication wholly unnecessary. * * *
>
> The statute was never intended to operate as a restraint upon the making of ordinary campaign addresses by the candidates or others, whether by radio or otherwise, nor was it so framed as to apply to the reproduction of the contents of public campaign speeches in newspapers as a matter of ordinary news interest to readers. The libel laws, civil and criminal, afford adequate safeguard against newspapers who republish defamatory statements made by candidates or others, in campaign addresses or otherwise.

CHAPTER VI

DECISIONS RELATING TO PROHIBITION OF CONTRIBUTIONS BY CORPORATIONS

Perhaps the first matter to engage our attention in connection with the question of contributions by corporations to political funds is that of the constitutionality of statutes on the subject. The question has received consideration in a Federal case, and in it the court had little difficulty in finding that all constitutional requirements had been met, and that the statute in consequence stood in full force. This case is that of *United States* v. *United States Brewers' Association*, which came up in a Federal district in Pennsylvania in 1916 (239 Fed. 163). Here the association named together with other brewing corporations had been indicted for conspiring to make contributions in a political campaign having to do with the election of a Representative in Congress, in violation of the Federal corrupt practices law. Apart from the question of conspiracy, which was found to be definitely enough set forth in the indictment, the issue turned upon whether that provision of the enactment was constitutional which prohibited national banks and corporations organized under Federal laws from making contributions for political purposes, and which prohibited any corporation from making such contributions in elections for the office of Representative in Congress. The pleas of the defense that the latter provision was unconstitutional were considered in order by the court. In the first place it pointed to the provision in Article I, section 4, of the Constitution of the United States, that "the times, places, and manner of holding elections for Senators or Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators"; to the provision in Article I, section 2, as to the qualifications of voters for the office of Representative in Congress; to the provision in Article I, section 8, as to the power of Congress to carry out the powers assigned to it and to the general provision in Article VI, as to the Constitution of the United States being the supreme law of the land. The court then, in holding that the Constitution allowed Congress to make laws with regard to the election of Representatives in Congress, declared:

> The elector being thus qualified by State laws, but deriving his right to vote for members of Congress from the Constitution of the United States itself, it follows as a necessary conclusion that Congress has power to protect him in the enjoyment of that right.

The court found likewise that Congress had full power to regulate, and the ultimate power over, elections of its own members, powers which it had exercised in other connections. It was further asserted that all artificial creatures, such as corporations, were at all times "subservient and subordinate" to the Government. There were

three means, said the court, of participating in Government: by suffrage, by persuasion or coercion of the individual possessing that right, and by furnishing the means therefor. The first of these, the right of suffrage, had never, and was not likely to be, conferred on corporations; while with respect to the other two means of influencing governmental action, the corrupt practices laws had been enacted. It was next asserted:

> That the Government has equal concern in preserving the freedom of the voter and the purity of the ballot when the Representatives in Congress are to be voted for, needs only the statement to be conceded.

The court next shows how Congress by different enactments has undertaken to control the agencies by which political activities are carried on, together with the limitations imposed on expenditures, and declares the Federal corrupt practices statute as to contributions by corporations to be—

> In line with this wise and beneficent legislation by undertaking to place a prohibition against political activities by those artificial beings who are merely the creatures of law.

The court continues by pointing out the special interest which Congress has in securing free and pure elections, and the power of Congress to prohibit corporations from contributing to influence them as a "natural and necessary consequence."

The court then takes up and disposes of other allegations of the unconstitutionality of the Federal law. As to its being vague and uncertain, the court holds otherwise. As to the charge that it attempts to prohibit and punish the freedom of speech and of the press in the discussion of candidates and political questions, the court states that the statute—

> Neither prevents, nor purports to prohibit, the freedom of speech or of the press. Its purpose is to guard elections from corruption and the electorate from corrupt influences in arriving at their choice.

The court in this connection calls attention to the corrupt practices law and the Constitution of the State of Pennsylvania, which afford an illuminating commentary on the situation. With regard to the claim that the Federal statute tends to prohibit and punish contributions in behalf of candidates for State offices, or to their agents, or in connection with such elections, the court contents itself with maintaining that while perhaps there is reference in it to elections at which Presidential and Vice-Presidential electors are voted for, there is no essential difference involved whether the offices in question are State or Federal.

Few other decisions are found having to do with the matter of contributions by corporations to political funds when such contributions are prohibited by the law; but the tenor of these is to demand strict compliance, especially if a specific penalty is affixed for noncompliance. One case is that of *People* v. *Gansley* in Michigan in 1916 (191 Mich. 357, 158 N. W. 195, Ann. Cas. 1918 E 165), already referred to. Here the sum of $500 had been advanced by a brewing company to defeat local option in an election in the city of Lansing. The court, though with a dissenting opinion, held this to be in violation of the provision of the corrupt practices statute, which forbade contributions by corporations "to any candidate or to any political committee for the payment of any election expenses whatever." It

did not regard the act as in contravention of the constitutional provision in favor of "due process of law," while at the same time it could not question the power of the State to control the corporations which were created by it, there being but a valid exercise of the police power. The views of the court were thus stated:

> The instant case, in our opinion, does not present an instance of deprivation of property, nor of fanciful or unjust classification for purposes of regulation. The expenditure of the money of the Lansing Brewing Company for election purposes cannot be deemed to be a property right within the meaning of the Fourteenth Amendment. Such corporations have no right to participate in the elective franchise. We are not dealing with a measure that deprives a corporation of any of its property, or that impairs the value of that property. Neither are we dealing with the deprivation of any right or privilege granted by the laws under which such corporation was created and exists. * * *
>
> The Lansing Brewing Company was created under our statutes for the purpose of manufacturing beer. The privilege was not conferred upon it of using its funds for the purpose of influencing public sentiment in connection with an election. It is probable that the legislature had in mind the fact that it is a matter of history that corporations have in many instances used their funds (acting through and by their officers) to influence elections, and that body believed that such practice was an abuse and menace to good government which it sought to remedy by this legislation. * * *
>
> It was for the legislature to say, in the exercise of the police power, whether such use of corporate funds opened the door to corruption and tended to destroy safeguards sought to be placed around elections to "protect the purity of the ballot."

The court also held that in the statute there was no interference with the right on the part of officers of corporations freely to speak, write, and publish.

A similar case in Indiana in 1917, *State* v. *Fairbanks* (187 Ind. 648, 115 N. E. 769; see also *State* v. *Dausman*, 187 Ind. 730, 116 N. E. 306), also previously cited, involved an action against the officers of a brewing company for the contributing of the sum of $200 to a political organization for the defeat of local option in a certain township election. In upholding the provisions of the statute making officers of a corporation personally responsible for a violation by it, the court declared that the legislature had a perfect right to take such action. It declared:

> It was the evident intention of the lawmakers that corporations as such should not contribute to campaign funds for the purpose of controlling or influencing votes. * * *
>
> This [provision] is intended to and does make each officer of a corporation participating in the contribution of money to any election of any kind liable. That the Act in question intended to make a crime personal is clearly apparent. That a member of the board of directors or other officer of a corporation who contributes the money of the corporation to a purpose prohibited by statute shall be made liable to prosecution for so doing as is much within the power of the Legislature, as is the receiving of money by an officer of a bank after he knows the same to be insolvent. Corporations act only by and through their officers and agents, and it seems that the Legislature intended to place the punishment where it would be effectual.

In a case, however, based upon the same facts, likewise already noted, *State* v. *Terre Haute Brewing Co.* (186 Ind. 248, 115 N. E. 772; see also *State* v. *McCrocklin*, 186 Ind. 277, 115 N. E. 929; *State* v. *Draper*, 187 Ind. 300, 116 N. E. 422), where punishment was also sought in connection with a section of the statute, which forbade contributions by corporations, but omitted to specify a penalty for violation, a different view was taken. It was held that in such circumstances corporations could not be indicted for their offenses. The

court was moved to this decision because the law of the State regarded as crimes only those offenses which had a penalty fixed by statute. It was also influenced by the rule that criminal statutes are to be strictly construed. Hence a corporation, as in this case, not being embraced in the punishment to be imposed for violation of the statute, could not be punished therefor.

In connection with the matter of contributions to political funds by corporations, the question has arisen whether labor organizations are to come within the prohibition. In the case of *Hatcher* v. *Petrey* in Kentucky in 1935 (261 Ky. 52, 86 S. W. 1043), in an election contest with respect to the office of representative in the State legislature, it appeared, among other things, that the sum of $50 had been contributed by the local lodge of the United Miners of America, with the knowledge and consent of the candidate in question (who was president of the local). It was held that there had been no violation of the corrupt practices statute as to contributions by corporations of any kind, there being no evidence that the local lodge was within that category.[1]

Another question relates to the activities in political matters of corporations which are of nonprofit character. A case dealing with this matter is presented in *La Belle* v. *Hennepin County Bar Association*, which came up in Minnesota in 1940 (206 Minn. 290, 288 N. W. 788, 125 A. L. R. 1023). This was a friendly action to obtain a declaratory judgment of the powers of a social and charitable association such as a bar association to conduct plebiscites among its members to show their preferences for judicial candidates in primary elections, the costs of printing and mailing ballots coming out of its funds, but with no expense involved in giving publicity to the results. The court was at no loss to find the bar association under review a corporation "doing business" in the State, and within the provisions of the law as to contributions to political campaigns by corporations (the law having been amended to cover all corporations, and not only those conducted for profit). The court commented:

> The need for regulating campaign expenditures by corporations not organized for pecuniary profit is as great as that of other corporations. * * * The nonprofit corporations and associations may raise funds for expenditures on behalf of candidates and measures to be voted on at an election as effectively as those organized for pecuniary profit.

The court furthermore held that the bar association was not a part of the judicial department of government, even though its members were in a sense "officers" of the court, any qualifications of members as such not being transferred to their organizations. Expenses of the poll, it also declared, were not "contributions" to a political campaign within the meaning of the statute, the term "payment" not applying in the present instance; no money had been turned over or service rendered for the benefit of a candidate; the expenditures actually made were an "incident to one of the authorized activities" of the association. Said the court:

> The expense of the bar plebiscite and the furnishing of the services of its officers in the management thereof are but incidental to the very proper exercise of de-

[1] In the case of *Vannier* v. *Anti-Saloon League of New York* in New York in 1924 (238 N. Y. 457, 144 N. E. 679; see also 201 N. Y. Supp. 642, 207 App. D. 870, 120 Mis. Rep. 412, 198 N. Y. Supp. 605), involving an order to compel the Anti-Saloon League to file a statement of its expenses and to appoint a treasurer, it was the view of the court that the Anti-Saloon League of New York was not the name of any incorporated association, and that there was not a political committee involved within the purview of the law, it being a single entity and not a grouping of individuals, substitution of the name "New York Anti-Saloon League" not being permissible.

fendant's power to maintain the honor of the profession and to promote the administration of justice.

The money was "not expended on behalf of a candidate," nor was "other thing of value" within the contemplation of the statute.

The remaining decisions in the matter of contributions to political funds are rather of incidental nature. In the case of *Smith* v. *Interstate Commerce Commission* in 1917 (245 U. S. 33, 38 Sup. Ct. 30, 62 L. Ed. 135), it was held that the president of an interstate railroad company could be compelled to appear before the Interstate Commerce Committee and answer questions with regard to possible contributions to political funds. In this case the Court remarked:

> Abstractly speaking, we are not disposed to say that a carrier may not attempt to mold or enlighten public opinion, but we are quite clear than its conduct and the expenditures of its funds are open to inquiry.

In the case of *Barrett* v. *Smith* in Minnesota in 1931 (183 Minn. 431, 237 N. W. 15), which was a private suit by stockholders and former directors with respect to an "expense account" kept by the president, out of which on behalf of the corporation contributions had been made to "certain political parties" and to "certain candidates for public office," it was stated by the court, *inter alia*, that by their previous acquiescence in this policy they were prevented from complaining, not coming into court with clean hands.[1]

[1] In this connection attention may be accorded a decision concerned with the making of contributions to political funds by corporations, though not coming directly under the present corrupt practices enactments. This is the case of *People* v. *Moss*, in New York in 1907 (187 N. Y. 410, 80 N. E. 383, 11 L. R. A. (n. s.) 528, 10 Ann. Cas. 309; affirming 113 App. D. 329, 99 N. Y. Supp. 138). The matter came before the court in the form of habeas corpus proceedings following upon the arrest of a person, who was charged with grand larceny in receiving money from a corporation in return for a contribution to a political fund from his own means. The relator (the person under arrest) was vice president of an insurance corporation, and had in the year 1904 advanced money to the amount of $50,000 to the treasurer of the national committee of one of the great parties, under promise of reimbursement from the funds of the corporation. Such reimbursement was duly made, but through the financial committee of the corporation, and not by formal resolution. In its review of the matter, the court held this not to be grand larceny, being moved to its view because of the absence of certain of the elements of this crime, especially the intent to defraud or deprive of property. It reasoned that such charge was defeated from the following considerations: The money was received openly and under claim of title; it was not in the possession, custody, or control of the relator as bailee, servant, officer, trustee, or in any other capacity; no personal advantage was to be gained by the relator; and there was no evidence of an attempt to defraud. The court recognized that the act of the corporation in making the reimbursement was *ultra vires*, but it did not regard such act as being necessarily illegal. It believed that the only question before it was whether or not there had been committed the crime of grand larceny; and that it could not consider the matters of ethics involved, nor could it go into the subject of civil responsibility. It pointed out the differences between *mala per se* and *mala prohibita;* and declared: "When there is no statute on the subject, and the act is not one which concerns the state directly, because affecting the peace, order, comfort, or health of the community, then the wrong done is private in its character, and must be redressed by private suit." In this case there was, however, a strong dissenting opinion in which the relator was said to have aided and abetted the commission of a crime, this commencing in the original wrongdoing.

CHAPTER VII

DECISIONS RELATING TO ENFORCEMENT OF THE CORRUPT PRACTICES PROVISIONS

A number of decisions are to be found interpreting in one way or another the provisions of the corrupt practices measures imposing penalties for their violation, or providing machinery for their enforcement. Some of these decisions have to do with matters not peculiar to such statutes, but rather with matters of a general nature in the law; these will accordingly call for but limited consideration.

In certain matters, especially the requirements regarding the filing of statements, there may be invoked for violation the penalty of forfeiture of office. The courts have likewise expressed an opinion in regard to the oath or affirmation to be attached to statements. In a considerable number of the States requiring the filing of statements of receipts and disbursements, such statements must be made upon, or accompanied by, an oath or affirmation to the effect that they are full and true in all respects. In some of these States the making of this oath or affirmation is a condition precedent to the entry upon office, failure in respect thereto rendering the candidate ineligible to the office which he has sought. In general, where this provision of the statutes has been passed upon by the courts, it has been held to be unconstitutional, as being repugnant to that provision of the State Constitution which declares that no oath may be required of an officer-elect beyond that to support the Constitution.

In a California case, *Bradley* v. *Clark*, in 1901 (133 Cal. 196, 65 Pac. 395)—a case already referred to—the right to hold the office of mayor of the city of Sacramento to which the incumbent had been duly elected was contested, because, among other things, he had failed to make the affidavit certifying to the correctness of his statement of expenses, as was required by the law. The act provided that in addition to the usual penalties for this omission, the offending candidate should forfeit his right to office, that no certificate of election should be issued to him, and that the incumbent of the office in question should not surrender it to him. The court in holding this provision to be unconstitutional refers to the words of the Constitution, which are that "no other oath [than that to support the Constitution, Federal and State] declaration, or test shall be required as a qualification for any office or public trust." It then proceeds:

> The Constitution itself speaks of this prescribed oath as a qualification for an office. Equally is the oath required to be taken by the successful candidate as a qualification for office, for the very provision of the Act is that for his refusal or neglect in this regard, or for the making of a false statement, he shall be deprived of his office, and shall forfeit any office to which he may have been elected. * * * Had our Constitution merely declared, as some do, that no other "test" than the one prescribed should be exacted of an officer-elect, it might then be argued with some force that it had reference to certain tests, in their nature religious. But the Constitution has designedly said, not alone that no other test should be required, but that no other "oath or declaration" should be exacted. The language

leaves as the only matter for determination, the single question whether this Act does impose an oath or test substantially differing from that prescribed by the Constitution. That it does prescribe a substantially different oath in addition to that made exclusive by the language of the Constitution the very reading of the section makes manifest. But, in holding that the legislature may not prescribe this additional oath upon a successful candidate, as a prerequisite to his right to take office, and as an additional qualification to those enunciated in the Constitution, we do not mean to be understood as saying that the legislature may not with propriety provide that a candidate shall forfeit his office for the doing of any of the inhibited acts, or for the failure to do any of the required acts, set forth in the purity of election law. The legislature would have the undoubted right to require an officer-elect to file just such a statement as the law now prescribes, and to provide that for a failure so to do he should forfeit his office or his right to office; but under the strict mandate of the Constitution, it has no right to exact this different and additional oath or affirmation before the taking of office as a prerequisite thereto. So much of the Act, therefore, as requires the candidate to support his statement by the above-required oath, as a prerequisite to the right to take office, is void.

In New York a very similar opinion was rendered in the case of *Stryker* v. *Churchill* in 1903 (39 Misc. 578, 80 N. Y. Supp. 588). In an action to oust the incumbent of the office of highway commissioner of a certain town, it was alleged that he had not filed a verified statement of moneys contributed and expended in his preceding campaign for election, as was prescribed by the law, and that he was therefore disqualified for holding office. The court, following a precedent already established in the State, ruled that "so far as the section provides for the forfeiture of office by failure to make and file the oath prescribed, it is repugnant to Article XIII of the Constitution of the State of New York," which declares that "no other oath, declaration, or test shall be required as a qualification for any office or trust," other than that to support the Constitution.

In a third decision a not different view is taken with respect to conditions of any kind which the legislature may attach to the taking of office. This is the case of *State* v. *Bates* (102 Minn. 104, 112 N. W. 1026, 12 Ann. Cas. 105), one already considered, in regard to a statute with the requirement of a full statement of expenses as a condition precedent to the holding of office. The court believed that if the legislature merely intended to *regulate* the conditions upon which a successful candidate might enter office, it had the constitutional right to do so. In the present statute, however, it felt that something more was being attempted. Through Start, J., the court says:

> Our corrupt-practices act cannot, in my opinion, be reasonably construed simply as a regulation of the right to hold office, but on the contrary, * * * in it is an attempt to render an elector who is a candidate for office ineligible if he fails to include in his verified statement of election expenses each and every item paid, disbursed, or promised.

Questioning the right thus to disqualify a successful candidate, and asserting that by the Constitution any qualified voter is entitled to hold office, the court also states:

> [The statute] attempts to make the proof of an act done or omitted by an elector before his election to an office and before his conviction thereof operate by relation so as to render him not only ineligible to the office at the time of his election, but also to render every ballot cast for him void when cast.

We may now pass to an examination of the attitude of the courts in respect to the legal procedure involved in the enforcement of the corrupt practices laws, particularly in the interpretation of provisions designed to facilitate such enforcement. Some of the corrupt practices laws provide for the calling in of special machinery for their

enforcement. In certain instances this machinery is to be put into operation upon the initiative of private citizens as voters. In one decision we have the determination of the question as to who is a proper "elector" authorized to have proceedings instituted. This is the case of *State* v. *McFillan* in Ohio in 1897 (7 O. C. D. 386, 4 O. C. C. 407), where an action was brought to declare vacant the office of a member of the board of education of the city of Toledo on the ground that he had failed to file a correct statement of his expenses, and had expended a greater sum than was allowed by the law. The action was taken on the application of an elector under the provisions of the law. It appeared, however, that the person who lodged the complaint resided in a different ward from that in which the respondent was a candidate. The court held that such a person was not an "elector" in the intendment of the statute; and accordingly was not entitled to make application for the proceedings. It considered the phrase "such election" as employed in the statute with reference to the election concerned to mean, under fair construction, only the election in which the "elector" actually voted or could vote.

In a like decision in Minnesota in 1916, *Sawyer* v. *Frankson* (134 Minn. 258, 159 N. W. 1), involving contest proceedings with respect to the office of lieutenant-governor in connection with a primary election, on the ground of expenditures in excess of what was permitted by the law, it was held that the contestants must be persons of the same political party as such candidate and able to participate in the election in which he was voted upon.[1]

Another subject upon which judicial opinion has been expressed relates to the place where the petition praying for an inquiry or accounting of some kind is to be filed, the statute sometimes failing to indicate plainly where this is to be done. In a New York case in 1907, *In re Lance* (55 Misc. 13, 106 N. Y. Supp. 211), it was found that a petition praying for a summary inquest into the failure of the treasurer of a political committee to file a statement as authorized by the law had been filed with a justice of the supreme court. This was held not to constitute a real "filing" within the meaning of the statute. In the view of the court, the inference from the wording of the law was that the filing should be with an officer whose duty it was to keep records, perhaps the same officer with whom is filed the statement itself, or with the clerk of the county where a justice is then sitting. Said the court:

> The sole object of filing is to deposit the document in a public place, so that it may be seen and examined by any person interested. It is thereby made a public record.

According to decisions in respect to analogous matters, the court believes it would appear that the filing is to be made with—

> An officer whose duty it is to file papers, and who is required to keep and maintain an office or other public place for their deposit, and that the papers must either be delivered personally to such officer, with the intent that the same shall be filed by him, or delivered at the place where the same should be filed.

A justice of the peace having no place in which to receive or file papers, it is the opinion of the court that—

> The statute being silent, it will be presumed that the intention was that the petition should be filed with an officer whose duties pertain to that service, and who is required by law to keep and maintain a place or office for that purpose.

[1] In a case in Oregon in *Tazwell* v. *Davis* (64 Oreg. 325, 130 Pac. 400, 1913), it has been held that the petition for the contest of an election may be brought by any voter having the right to vote at the election in question.

Finally, the court calls attention to the circumstance that the statute speaks of the "presentation" of a petition to a court, which indicates in the legislative mind a difference between such an act and the act of "filing"; and that the provisions regarding the filing of an "undertaking" have reference rather to a particular justice than to a court.

Similarly, in a Pennsylvania case in 1912, *Sunshine's Account* (21 D. R., 294), it was held that an order for the audit of the account of the treasurer of a county committee, on the petition of five or more electors, in accordance with the statute, cannot be made by a judge in chambers in vacation. As the act required that such petition be presented, not to a judge, but to the *court* of a county in quarter sessions, action was assumed to be possible only at the regular sessions of the court.

In a later decision in this State, *Jermyn's Election Expenses*, in 1914 (57 Pa. Sup. Ct. 109, 14 Lack. Jur. 275, 27 York 124), however, the court was satisfied with the filing of a petition with a judge in chambers. This petition was for an inquiry into the expense account of a candidate in a primary election for the office of mayor of the city of Scranton, and was duly presented by five electors. At the time that this was to be done the court had adjourned, and the petition was filed in the office of the clerk of the court, and a presentation made to a judge in chambers. This was regarded as a sufficient compliance with the law. The court believed that the statute was of remedial character, and was therefore to be liberally construed. It took the expression respecting the judicatory in which the petition was to be filed in a broad and popular sense; and it regarded that what was done when the court was not in session answered. The petitioners having done all that was possible in the circumstances, the court did not believe that the purpose of the act should be thwarted by a technicality. It declared:

> The duty of the clerk in receiving the petition for audit was merely clerical. There was not to be a present court examination, investigation, or order made or act done. No judicial discretion was to be exercised. * * * The words have regard to the methods of procedure, so that there may be regularly on the records of the court the petition for the audit of the account that is at that time filed, and in the sense in which they are used in the statute are directory.

In the case of *In re Potter* in Pennsylvania in 1922 (5 North'd 313), in respect to an election for a judgeship covering two counties, it was held that a statement of expenses need be filed only in the county of the candidate's residence, a filing in another being a mere nullity.

A somewhat different question in respect to which there has been adjudication is the effect upon the presentation of a petition in the withdrawal, during the proceedings, of some of the petitioners. In *Election Expense Account*, a Pennsylvania case in 1913 (12 Del. 313 22 D. R. 952), the petitioners had prayed, not for an audit of the accounts of the treasurer of a county committee, but for the certifying by audit of such account; and because such petition had been signed under a misapprehension, two of them asked in good faith to withdraw. Leave so to do was granted, even though the jurisdiction of the court was thereby ousted, and the statutory period for filing a petition had expired.

In other cases, however, a less indulgent view of the matter is taken. In *In re Wilhelm* in Pennsylvania, already noted (111 Pa. Sup. 133, 169 Atl. 456), involving a petition to certify the expense account of a candidate for Membership in Congress. While regarding the

petition as a sufficient praying for accounts and not an audit, the difference between the two not being great enough, the court refused to permit any of the petitioners to withdraw from the proceedings. It declared:

> When parties set in motion the machinery of the court, they may not thereafter, or as a matter of course, stop it, if it is under the control of the court.

The interest of the public is paramount, and withdrawal will be recognized only for sufficient reason.

Such is also the attitude of the court in the case of *In re Petition to Audit Account of Brumm*, in Pennsylvania in 1931 (46 York 81).

In the case of *Miller* v. *Maier* in Minnesota in 1917 (136 Minn. 231, 161 N. W. 513), involving contest proceedings respecting a town supervisorship on the ground of a candidate's making gifts in return for votes, it was held that an elector having part in the bringing of the proceedings was not permitted to withdraw his name.

Likewise in *In re Sweeney*, a Pennsylvania case in 1938 (32 D. and C. R. 449), persons who had filed a petition for an audit of the expenses of a candidate for a tax collectorship were not permitted to withdraw their names simply in consequence of a change of mind, and not through any misunderstanding or misapprehension at the time of the original action.

A decision in the State of Minnesota has to do with the question whether the formalities in contest proceedings when legal on their face and in full compliance with the statutory requirements, may be set aside in circumstances where there have been false pretenses involved in the securing of the proceedings. In the case of *Exreider* v. *O'Keefe* in 1919 (143 Minn. 278, 173 N. W. 434) contest proceedings had been brought with respect to the election of a county attorney of a certain county on the ground, among other things, that he had during the campaign circulated and published false charges, in violation of the corrupt practices law. The petition for the contest had been duly signed by the required number of voters and notice had been duly served, all in accordance with the statute. The court refused to allow the contestee to show that some of the petitioners had signed under false representations as to the nature or purposes of the proceedings. The matter, the court believed, transcended mere personal considerations, and had become one of general public interest. A petitioner might possibly, it thought, have his name stricken off a petition at the proper time, but not after the time limit for its filing had passed.

Another matter that has called for attention from the courts has to do with the validity of the proceedings on a petition for an accounting of election expenses, which in some respects are formally defective or do not conform with all the technical requirements of the statute. In the one case of the kind that has had judicial consideration, a narrow construction is given to the matter and literal compliance with the formalities of the law insisted upon. Such is the disposition of *Houck's Case* in Pennsylvania in 1920 (16 Sch. 116, 48 Pa. C. C. 550). Here a petition for a certified accounting of the treasurer of a political executive committee was presented to a judge in chambers, supposedly in accordance with the corrupt practices law. The court, in passing upon the matter, said that this act was both penal and remedial, the penal part of which was to be construed

strictly. The accounting proceedings were regarded as penal, to be so treated, and to be the exclusive remedy. The statute, declared the court, allowed only the praying for an audit, the court being required, on petition, to direct an officer to "certify" the account for audit, whereas the present petition was for a certification of account. The statute also required, it was further pointed out, the presenting of the petition to the court in quarter sessions, consisting of three judges, instead of to a single judge, as here. The purpose of the law, the court stated, was to ascertain whether the candidate had made any illegal expenditures, so that if necessary criminal proceedings might be instituted. The law carefully defined the steps to be taken to secure a criminal prosecution, which steps were different from the steps necessary with respect to most crimes. In this case, the court declared, not every step as required had been taken, and in consequence the petition for an accounting was dismissed.

Courts may be disinclined to allow proceedings unless they are convinced of meritorious grounds therefor, and of the absence of fault with the protesting parties. In a case in Pennsylvania in 1938, *In re Investigation by Dauphin County Grand Jury* (332 Pa. 289, 2 Atl. (2) 783, 120 A. L. R. 414), there was refusal of a petition for a writ of prohibition to prohibit a grand jury investigation of unlawful collections of assessments from public employees because, among other things, the charges were "not set forth with sufficient clarity to warrant action by the grand jury"—the persons, the time, and the place not being stated (the acts complained of being forbidden by an earlier law).

At the same time proceedings may be carried through when the protesting parties are found to be acting in good faith, even though there may have been some minor misstep on their part. In a Pennsylvania case in 1938, *In re Laub's Account* (34 D. and C. R. 703), involving a petition for the auditing of the account of a candidate for judicial office, proceedings were not dismissed when unnecessary facts were set forth in the petition, or when there was failure to file a bill of particulars within a specified time as to unnecessary facts, this being properly filed later when the situation was fully known.

In further matters in respect to the filing of statements which come within the purview of the courts, there is found more intimate connection with the machinery provided for the securing of these statements. One has to do with the question whether the officials with whom a statement is properly filed have the right to pass upon it when such statement is regular on its face. Such was the issue presented in *State* v. *Board of Elections* in Ohio (3 O. App. 190, 20 O. C. C. [n. s.], 190)—a case that has received examination in a previous connection—where mandamus proceedings had been brought by a successful candidate for the office of probate judge to compel a board of elections to issue to him a certificate of election, this board basing its refusal on the ground that such candidate had failed to account for all his expenses, as required by the law. The court took the view that the board had no right to withhold the certificate of election, pointing out that the statute provided that it might do so only when a statement was not filed. Says the court:

> There is nothing in the Act which authorizes a board or officer whose duty it is to issue a certificate or commission of election, to refuse because the statement is not a complete statement, or because it does not include all expenditures made by the candidate. All that such board or officer has to do is to determine whether

such a statement has been filed or not. The duty of determining whether such a statement is either incomplete or false devolves upon the court before whom a petition is filed, charging that the candidate has not complied with the provisions of the Act in either of these regards. * * *

If charges of wrongdoing are made against a successful candidate, this Act provides an easy and speedy way for the determination of his right to receive the office to which he has been elected. * * *

That the choice of the electors as expressed by their ballots should not be tainted with fraud and corruption is of the utmost importance to the electors and to the State, and such laws as the one we are now considering, enacted for the purpose of enforcing the purity of the ballot, are wise and should be rigidly enforced; but it is of equal importance, both to the electors and to the person elected, that the person rightfully elected by the people should be permitted to perform the duties of the office when he has been legally elected.

The legislature, in enacting the provisions under consideration, wisely provided a speedy and efficient means of determining the right of a person elected to an office, who may be charged with improper conduct in securing his election. It will not do to brush aside the proceedings provided by the Act for a forfeiture of the office as mere technicalities not controlling in the courts, and proceed as a court of equity to deprive the party elected by the electors of his office.

Along somewhat similar lines of reasoning, though upon a different matter, the court speaks with equal vigor when the name of a candidate is refused a place on the ballot in mandamus proceedings for the certification of the election of a candidate for the office of city constable without due conviction, the offense alleged being failure to file an expense account as required. In the case of *State* v. *Lasher* in Oklahoma in 1926 (116 Okla. 273, 244 Pac. 809), the court asserted:

There is no authority therein [in the law] by which the county board may arrogate to itself the power to defeat the will of the people based on its mere opinion of the guilt of the nominee, whether that opinion be based upon a report which is filed, or upon a failure to file any report.

Courts in general view with disfavor proceedings which might interfere with the choice of the people in elections to office. In the case of *State* v. *Carson,* in Florida in 1934 (114 Fla. 451, 154 So. 150), there was involved a petition for *quo warranto* proceedings in respect to a county clerkship for failure to file a statement of expenses as required by the law, with the keeping of the name of the candidate in question off the ballot in consequence, the name having been written in notwithstanding by the voters. The court held that the successful candidate was not thus rendered ineligible to the office concerned. So far as the only penalty was the denial of a place on the ballot, that had been done; but with the action of the voters as it was, his election stood. Said the court:

The statute does not provide that the failure to file the required financial statement of expenses incurred in primary elections renders a person so failing ineligible to election or to fill the office if elected.

It may also be noted that in the case of *Staples* v. *State,* in Texas in 1922 (Tex. Civ. App. 244, S. W. 1068), in injunction proceedings in respect to a candidacy for the office of United States Senator, it was stated that as a general thing the secretary of state might be enjoined from having placed on the ballot the name of a candidate who had made expenditures beyond the legal limitation in a primary election except where the proceedings might be too near an election day.

Another matter relates to the question of whether upon the rendering of an initial wrong statement, proceedings may be instituted where the statute authorizes the filing official to notify a delinquent

party and to afford him an opportunity to submit an amended statement. In *Barnard* v. *Superior Court* in Michigan in 1915 (187 Mich. 560, 153 N. W. 662), involving mandamus proceedings, it was found that a candidate for the office of sheriff in a primary election had filed a statement as required by law, but that the county clerk, on complaint made to him, had notified such candidate to present a new and corrected account, which was accordingly done. In delivering judgment in the case, the court expressed its belief that no prosecution could be based upon the falsity or incorrectness of the first statement rendered, as it was the manifest design of the statute to allow a candidate, upon due notification, to file a proper one, and hence that no conviction was possible with respect to the former. Said the court:

> A careful reading of sections 7 and 8 [of the statute] convinces us that it was the legislative intent to permit candidates, after notice of their failure to comply with the law, to file the required statement and thus avoid prosecution under section 8.

The court also quoted with approval the opinion of the trial court with regard to the possibility of punishment for offenses in connection with the first statement:

> Why, then, does the legislature provide for the filing of a subsequent and amended statement? * * * If he [the candidate] does not file a second one, section 8 provides, "upon the failure of any person to file a statement within 10 days after receiving such notice," proceedings shall then be instituted on his failure to file the second statement. * * * Or if he should file a second statement and that proves erroneous, defective, or palpably incorrect, then the prosecutor is also to be notified, and proceedings are to be instituted, but they are to be instituted upon the second statement.

It was likewise held that no prosecution was to be had with respect to the second and amended statement, even though it was charged that certain sums received and expended were not accounted for either in this or in the first statement, where the original complaint relates only to the prior one.

The relation which the courts are themselves to have to the statements has also been passed upon judicially. In a New York case already cited, *In re McLennan* (65 Misc. 644, 122 N. Y. Supp. 409; affirmed 142 App. D. 926, 204 N. Y. 608, 97 N. E. 1108), the court announced in respect to the statement required by the corrupt practices act, that it was not a function of the bench to determine independently the lawfulnesss of expenditures, or to ascertain whether they came within the provisions of the law, or to supervise statements generally. The court was only to act when charges by petition or otherwise were brought before it, and when such charges appeared to be sufficient to justify an investigation. It was the intention of the legislature, it was believed, for the court not to make a general inquest of statements, but only to await the presentation of charges. As to what was actually before it, the court said:

> Although it is given wide powers, it was clearly not the intention that, after every election, it should, without proof, without even the presentation of charges, hold a general inquest upon the conduct of every political committee to determine whether a crime may or may not have been committed. There must be some basis for its action. There must be a petition setting forth the facts said to be wrongful, either directly or upon information and belief; or in some way facts and circumstances must come to its attention which seem to show a violation of the statute. * * * As will be seen, the statute gives to every one the power to examine minutely every expenditure made. If any one of them is illegal, the attention of the court should be called to it.

When, however, courts are called upon to make an examination of statements, they allow to themselves a very wide range in their procedure. In a case already considered, *Umbel's Election* (57 Pitts. 343, 43 Pa. Sup. Ct. 598; affirmed 231 Pa. St. 94, 80 Atl. 541), the court points out the necessity of a careful inquiry, and how mistakes are to be brought out on the auditing. It says:

> It is thus seen that the scope of the audit of the account of a candidate for nomination is very broad * * *. The provisions of the Act in this regard, being remedial, are to be given a liberal construction.

In another Pennsylvania case also already noticed, *Bechtel's Election Expenses* (39 Pa. Sup. Ct. 292; see also 18 D. R. 167), the court explains why auditing is necessary:

> It was because of the contemplated possibility that a candidate might neglect or refuse to file such an account as is required, that the legislature conferred upon the electors the right to have the account audited; and it was upon such failure or refusal, even when not resulting from an intent to deceive, that the Act intended to operate, by imposing the costs on the accountant because in such case there would be accomplished only by the audit what should have been effected by the mere filing of the account.

So great is the latitude which the courts will take in such auditing that in case of defective statements "leave to amend" will even be granted in their discretion if they are convinced that there has been involved no serious wrongdoing. In the case just mentioned a candidate was permitted on such auditing to file certain receipts and the names of certain contributors which had been omitted in his original statement. We have already seen in the previous case of *State* v. *Long* that the court may permit very full amendment of statements not regarded as intentionally incomplete. In the case of *In re Wilhelm*, also previously examined, a like attitude is taken. (See also 104 Pa. Sup. 429, 159 Atl. 49.)[1]

In *Babcock Ticket Committee*, also in this State in 1912 (66 Pitts. 630, 32 York 91), where it was claimed that certain items had been omitted from an account, it was demanded that objections be specific and of such character that the accountant could be reasonably informed as to the particular receipts or expenditures to be disclosed.

In *Commonwealth* v. *Callahan* (3 Mun. L. R., 239, 13 Lack. 83), in Pennsylvania in 1913, it was held that a defect in the filing of an account could not be cured after suit has been begun.

We now come to the consideration of what may be termed the "legality" of the special proceedings which have been provided for in the corrupt practices enactments to secure their enforcement. These proceedings have, either as a whole or in some particular, been attacked on different grounds, including the ground of their alleged unconstitutionality. As a general thing, the courts have upheld the provisions, at least in part, as they have been enacted. Now and then a specific provision has been found to be invalid; but even here the courts usually take pains to declare that the remainder of the act is not to be affected.

A case that sets forth various objections to the special proceedings of the corrupt practices laws, with the meeting and disposal of these objections one by one, is that of *Ashley* v. *Wait* (*Ashley* v. *Three Justices of Superior Court*), which came up in Massachusetts in 1917 (228 Mass. 63, 116 N. E. 961, Ann. Cas. 1918 E 865, 8 A. L. R. 1463;

[1] See *ante*, pp. 15, 44.

writ of error denied, 250 U. S. 652, 40 Sup. Ct. 53, 63 L. Ed. 1190). Here a petition had been brought by a person who had been elected to the office of mayor of a certain city, to restrain the three justices designated in the act from hearing an election contest presented by five electors to have an election declared void because of violation of the statute. In sustaining the provisions of the act, it was held by the court, in the first place, that there was no violation of the provision of the Constitution (Art. IX, sec. 1) that all judicial officers should be nominated and appointed by the Governor, by and with the advice and consent of the council. The measures involved, the court said, were only a proceeding in the superior court; no new court was established, jurisdiction being in an existing one; while the legislature had power to provide for particular causes before one or more of the judges of a court. There was, moreover, no infraction of the Constitution with respect to the designation of a particular court in which the election petition was to be brought. Nor was the act considered to be in derogation of the constitutional powers of the supreme judicial court.

Next, it was held that in the proceedings that right of trial by jury was not denied. The office in question was not "property", nor was the case a "suit between two or more persons," for which such trial was provided in the Bill of Rights. Instead, the action was a public one, and not a private one on the part of the petitioners. This public interest was manifested both by the part played by the attorney general throughout and by the part of the court in granting leave for the proceeding after a preliminary hearing and after its finding of a reasonable cause therefor; while the remedy permitted in connection with the election was of a public nature, being not redress for a private injury but vindication as to a public wrong. In the words of the court: "The whole proceeding, throughout, is public rather than private in character. It is in the nature of a *quo warranto* proceeding." The election petition, moreover, was civil and not criminal, in form, thus debarring a jury trial on this ground. The provision of the act, furthermore, rendering ineligible to office a person found to be guilty, when considered in connection with Amendment 40 to the Constitution, which added to Article 3 of the Amendments a new class of persons from whom the right of suffrage was withheld, namely, "persons temporarily or permanently disqualified by law because of corrupt practices in respect to elections," does not give a constitutional right of trial by jury. Finally, there was no violation of the Federal Constitution as to trial by jury, such not being essential to due process of law granted by the Fourteenth Amendment; while the right to office or to vote was not to be considered as property.

Again, there were imposed no unconstitutional limitations on the right to vote or to hold office; there was no violation of article 9 of the Declaration of Rights providing that elections were to be free and that the inhabitants were to have equal right in elections to office; and there was no denial, in the manner of the election petition, of the right of the equal protection of the laws.

Furthermore, as to the provision of the act, allowing the exception of certain small towns from its operations, it was held that such exemption did not impair the validity of the act.

The attention of the court is, lastly, given to the manner in certain respects of the present proceedings. The description of the persons

bringing the original petition as "inhabitants, taxpayers, and voters in the city of New Bedford" was regarded as quite sufficient. It had also happened here that the three special justices had been assigned by the Chief Justice, not immediately after the election, as required by the act, but three months thereafter. This was held not to be in violation of the statute, the word "shall" as used therein being regarded as but directory in fixing the time when the assignment should be made. In this case also it was claimed that the subpena issued had been made returnable within fifteen days after the filing of the original petition, and not within fourteen days, as required, by reason of which a petition had been brought to prevent the continuance of the proceeding. It was held, however, that such a writ could not be issued in respect to a tribunal which, as in the present instance, was acting within its jurisdiction and was not attempting to exercise a jurisdiction which it did not possess. As regards the case of *Dinan* v. *Swig* (hereinafter considered) in which a certain provision of the act was declared to be unconstitutional, it was held that the remainder which was separable and distinct was not affected.

In another case in Massachusetts in 1937, *Irwin* v. *Justice of Municipal Court* (298 Mass 158, 10 N. E. (2) 92), involving certiorari proceedings, question arose as to the provisions of the corrupt practices law permitting the institution of complaint for violation thereof—here excessive campaign expenditures—on reasonable grounds for so believing, and the holding of an inquest upon the subject by the court. It was decided that inasmuch as the term "may" was employed in the statute, the matter was left to the discretion of the court, a justice before whom it was brought being required only to exercise that quality.

In a decision in Minnesota the legality of proceedings specially provided for to contest an election has also been passed upon with approval. In the case of *Saari* v. *Gleason* in 1914 (126 Minn. 378, 148 N. W. 293) contest proceedings had been brought to oust from office the mayor of a certain city, it being charged by his unsuccessful opponent that he had, among other things, made illegal expenditures, and had published political literature not according to the statute. In the demurrer of the contestee it was contended that a contest was not warranted, there being authorized by the act only a criminal prosecution and forfeiture of office. In reviewing the law, however, the court stated that there was in fact another remedy allowed, namely, contest proceedings, initiated by a defeated candidate, or by 25 voters. That is to say, in the opinion of the court, there were provided in effect in the act, aside from the forfeiture provisions, two distinct remedies: criminal prosecution with supplemental judgment of ouster, and an election contest such as was now before the court. Of these two, the latter appeared to be the more summary in character, and the more expeditious.

In answer to the further claim that the provisions of the Constitution might be violated which by implication at least make a person entitled to vote, eligible to hold office, and which forbid a person to be deprived of office except upon conviction of an offense mentioned in the Constitution, the court held that the legislature had the power to enact a corrupt practices measure and to regulate the exercise of the right to hold office, without at the same time imposing new qualifications upon those about to take office—a view apparently somewhat

at variance with some which we have previously considered. It declared:

> We think that a statute prohibiting corrupt practices in elections, and preventing any candidate employing corrupt means to obtain an office does not, in any proper sense, impose a new test of eligibility at all. It simply excludes a candidate employing unlawful means, from the enjoyment of a particular office under an election which his own unlawful acts have rendered of no effect. It prevents his reaping the benefit of his own wrong. It says, not that he is ineligible to office, but that he must use honest means to obtain it.

The constitutional guaranties prohibiting the exclusion from office of a person eligible therefor was never, it was affirmed, intended to prevent the adoption of a corrupt practices law. Said the court:

> We hold that the legislature had the full power to pass a "Corrupt Practices Act," and to enact that the practice of corruption in securing an office shall bar a candidate from entering upon the possession or enjoyment thereof.

In this case objection was also raised that the courts were vested with discretionary power to set at naught the prohibitions of the statute in the allowing in certain circumstances of candidates to go free of punishment. The court did not rule directly on this point, but stated that the general rule of constitutional interpretation must apply, namely, that even though parts of an act are unconstitutional, the remainder, if there are enough left to constitute an enforceable measure, are to stand.

In a Missouri decision the provisions of the statute are likewise upheld. In the case of *State* v. *Towns* in 1899 (153 Mo. 91, 54 S. W. 552) an original proceeding had been brought before the State Supreme Court by the attorney general of the State, it being charged that a successful candidate for the office of county clerk had, among other things, made expenditures in excess of the limit imposed by law, and had failed to render an account as required. One of the defenses was that the special proceedings provided by the statute were in violation of the provisions of the Constitution as to trial by jury and as to due process of law. To this the court replied:

> In a word, the act of 1893 is in furtherance of and not in conflict with the letter, spirit, and policy of the constitutional guaranties and privileges relating to elections, and does not conflict with the right of trial by jury "as heretofore enjoyed," because before the adoption of the Constitution the right of trial by jury was not enjoyed in cases covered by the act; nor does the act deprive the defendant of life, liberty, or property without due process of law, because it contemplates that he shall have a day in court, in the same manner as everyone similarly situated may have, before his rights can be determined or the penalties of the act can be visited upon him.

Nor did the court regard the special original proceedings to be in contravention of the Constitution or to impair any rights of the accused, believing the writ therefor to be an "extraordinary, remedial writ, intended to redress wrongs which do not brook of the usual delays" allowed in trials in the regular course. The opinion was also expressed that, the writ being purely discretionary with the court, it was fully able to protect itself from an undue amount of litigation.

In several decisions that have already been considered in other respects there is also approval of the machinery that has been created for the enforcement of the corrupt practices provisions. In *Hawley* v. *Wallace* (137 Minn. 183, 163 N. W. 127), in response to the claim that in the special proceedings there was denial of the right of trial by jury as guaranteed by the Constitution, it was held that at the time of the adoption of the Constitution such right was recognized only with

regard to certain enumerated matters, among which were not included election contests.

In *Tipton* v. *Sands* in Montana (103 Mont. 1, 60 Pac. (2), 662, 106 L. R. A. 474)—a case that has had attention in a previous connection—the corrupt practices statute is said not to be in conflict with the legal provisions as to impeachment, the former relating to offenses before the assumption of office, and the latter to offenses committed while in office; nor to be in conflict with the right of free speech.

In *State* v. *Kohler* (200 Wis. 518, 228 N. W. 895, 69 A. L. R. 348) the corrupt practices law is declared to be valid, even though there is a method provided in the Constitution for removal from office, the legislature having power to regulate elections.

There are several decisions, on the other hand, adverse to the special proceedings provided for the enforcement of the corrupt practices laws. One is a New York case already referred to, *In re Lance* (55 Misc. 13, 106 N. Y. Supp. 211), in which the court goes into a careful consideration of the provisions authorizing summary proceedings on the part of the court to determine whether there has been a violation of the law. The statute here provided that upon the failure to file a statement regarding contributions and expenditures by persons not candidates or by three or more persons as a political committee, the attorney general, district attorney, an opposing candidate, or five voters might apply to the Supreme Court or to a Justice thereof, to demand a correct filing of the statement; and that thereupon a summary inquest should be held to determine the facts of the matter. The act further provided that a statement might then be required, unless the original neglect were willful; but that if the failure were willful, the offender might be fined an amount not exceeding $1,000, or might be imprisoned for not more than one year, or might be both fined and imprisoned. In commenting upon these several provisions the court characterized them as "clumsily expressed"; and affirmed that in those relating to a summary inquest a grand jury *ex parte* investigation and contempt proceedings had been confused, and that there was no workable distinction between acts pronounced willful and those not so pronounced. It held that there had been a violation of the constitutional provision declaring that no property could be taken without due process of law, and that "judgment" could be awarded only after notice had been given to the adverse party. The findings of the court may be quoted in full. After reviewing the provisions of the law, it states:

> The first objection urged by the respondent is that the Act is in violation of the due process of law provision of the State Constitution, in that it attempts to authorize the court or a justice thereof to award judgment without notice to the person subjected thereto. It is true the statute does not require notice of the inquest, but only provides that an interested party may appear * * *. The draftsman seems to have been minded to authorize the court or justice to prosecute a proceeding akin to an investigation by a grand jury, and also a proceeding for contempt of court. The former is in its nature ex parte—that is, without notice; but the latter may be had only after notice to the person proceeded against. These two distinct and well-known proceedings have been so confused in the language of the statute that support is found for the respondent's contention that the two have been so welded together as to make the entire proceeding violative of the fundamental law.
>
> The question for us is whether this is so, or whether a distinction may be drawn so as to regard the statute as providing for two separate and distinct proceedings, neither dependent upon the other. I have labored diligently to discover and set forth such a line of demarcation, but I have failed to find one. The proceedings

seem to be a continuous one. It is true an inquest may result with no person found delinquent; but a finding of delinquency on the part of any person requires an immediate judgment to that effect, including a requirement that such delinquent make compliance therewith. A contempt proceeding may thereon be taken, which, no doubt, is the same as in other instances of contempt for noncompliance with orders or judgments, which, although taken separately, rest for justification upon the binding force of former orders or judgments. If such orders or judgments may be taken without notice, they are void. They may not be made the basis for proceedings in contempt. Hence I am of the opinion that this Act in this respect is in violation of the organic law, which provides that no person shall be deprived of his liberty or his property without due process of law.

The statute, if it means anything, means that the inquest may be ex parte. In order to have saved it from the condemnation of the Constitution, a provision should have been inserted requiring notice to any person whose affairs are investigated before judgment be taken against him. It is impossible in a statute of this character to explain away the use of the word "judgment." No word in our language has a more definite or fixed meaning. It implies that what is thereby stated as determined is the sentence of the law decreed and pronounced after due inquiry and deliberation. The matters thereby adjudicated are regarded as settled until reversed by a higher authority. The legislature must be presumed, in the framing of the statute, to have employed the word with knowledge of its meaning, and with intent that full effect be given thereto. To read into the law another and different meaning of the term would open the door to the unsettlement of the most solemn and binding covenants known among men, and to which credence is required to be given by every court in the United States.

I am urged by the petitioner to find a distinction between violations of the statute which are willful and those which are not; and it is argued that, if the statute does not violate the fundamental law as to willful violations, it does not as to those which are not willful, and, therefore, the present inquest, applying only to violations not willful, may stand. But I fail to read the petition as making such a distinction; and, if it does, I am unable to separate the provisions of the statute in the manner suggested. To my mind the reference to willful violations has application only to the measure and manner of punishment. If the legislature intended any other, it has carefully concealed it from observation. A judgment must follow a violation which is not willful as well as in the case of one that is willful. Otherwise, there would be no provision for correcting willful violations.

In another decision particular exception is taken to the provision of the statute which abrogates in the proceedings the right of trial by jury. This is apparently not in accord with what we have found in certain previous decisions on the subject, though the question seems to depend mainly upon what matters were regarded as proper for such trial at the time of the adoption of the Constitution. In *State* v. *Markham*, which came up in Wisconsin in 1915 (160 Wis. 431, 152 N. W. 161; see also 162 Wis. 55, 155 N. W. 917), an action had been brought by an elector, with leave of the Governor of the State, as authorized by the statute, to declare void the election of a successful candidate for the office of district attorney of one of the counties of the State, and to declare the office vacant, on the ground, among others, that at the previous primary election expenditures had been made with his knowledge which were forbidden by the law, and that he had failed to render a statement of receipts and disbursements as was required. The defense was that in the provisions of the Act relating to such proceedings there was an infringement of the provision of the Constitution (Art. I, sec. 5) that "the right of trial by jury shall remain inviolate." This view the court took, though with a strong dissenting opinion, the remainder of the act being held to be valid. The opinion of the court may be quoted as follows:

> The title to an office means the "right" which the claimant has to it. Any proceeding which aims to establish the fact that the claimant is not entitled in the first instance to the possession of the office is an attack upon the right or title to the office. The term necessarily includes eligibility or capacity or competency to act, as well as election or appointment and qualification. * * *.

It does not change the nature of this action to say that it seeks to declare the office forfeited. The essential fact is that the plaintiff asserts that defendant never became an officer and never was entitled to the possession or emoluments of the office because of acts done during the primary election campaign. It is difficult to see how right or title could be more effectively characterized, or how this action can be disposed of without trying the defendant's title. * * *.

The nature of the right involved must necessarily determine whether the matter must be tried by jury or not. The legislature cannot by attempting to change the manner of procedure convert a legal action into an equitable one, so as to defeat the right of trial by jury. If this were so, the constitutional guaranty would mean nothing. * * *.

The right to hold office and enjoy the emoluments thereof is a legal right. When a controversy arose over such right, it was determinable exclusively in courts of law at the time our Constitution was adopted, either party being entitled to a jury trial as a matter of right * * *.

We think it is quite clear that the defendant in an action to try title to a constitutional office has a right to a jury trial on issues of fact, and that such right cannot be taken away by the legislature.[1]

That the special proceedings provided in the corrupt practices acts are not to be considered as constituting an exclusive remedy for their violation or that they are to supersede all other possible remedies, has also been asserted. This appears in a decision already referred to, namely, *People* v. *Knott* (176 N. Y. Supp. 321, 187 App. D. 604; overruling 172 N. Y. Supp. 249, 104 Misc. 378; see also 37 N. Y. Crim. Rep. 91, 462, 228 N. Y. 608, 127 N. E 329). Here habeas corpus proceedings had been instituted by the relator (the defendant) in connection with an indictment presented against him by the grand jury and his subsequent confinement in prison, as a result of an alleged violation of the statute, while manager of a political committee in an election for the office of mayor of the city of New York. It was claimed in his behalf that such indictment was null and void, inasmuch as the offense charged against him, the procuring of the making by an agent of an incorrect statement regarding expenditures, was not a crime or a violation of the penal law; and that the grand jury had no jurisdiction to inquire thereinto or to present an indictment. It was his contention that the summary proceedings provided for afforded an exclusive remedy. The court after an examination into the provisions of the law declared that the legislature did not mean to leave it discretionary with a treasurer to file a statement, and to afford punishment only on his later being compelled to do so, and then only by a fine or imprisonment as for contempt. If such could have been the case, said the court, there could be no punishment for the original failure to file a statement. In commenting on the provision that if the original attempt were willful, such punishment was also to be had, it was further declared that if a court was required to impose the penalty prescribed in the proceeding, such a provision was in contravention of the provision of the Constitution (Art. I, sec. 6) to the effect that a crime which might be punished by a prison sentence was a felony and could be proceeded against only by indictment. As to the claim that the proceeding provided for was an exclusive remedy, the court declared this argument to be—

Without force, for the Legislature might have intended that the failure to perform the duty originally should constitute a crime, and might have deemed it

[1] The matter of trial by jury, it may be stated, belongs rather to the general law on the subject than to the special proceedings in connection with the enforcement of the corrupt practices measures. In this place, however, reference may be made to *Mason* v. *State* (58 O. St. 30, 50 N. E. 6, 41 L. R. A. 291, 1898), in respect to the question how far an office is a "right," and how far the corrupt practices law abrogates the right of trial by jury, though the decision does not relate to an offense under our consideration of the laws, involving as it does bribery.

advisable and necessary also to provide a method for enforcing performance of this duty. There is, however, some force in this argument, based on the provisions of the election law to which reference has been made, which would be unconstitutional if intended to authorize the infliction of the punishment on conviction by the court or justice. It will be observed that these provisions apply only to a person proceeded against, as therein provided, for a failure to perform his duty. I am of opinion that it would not be reasonable to hold that, by the mere insertion of those provisions relating only to the particular offender against whom a summary proceeding is instituted to compel the filing of a proper statement, the Legislature intended that all others who deliberately and willfully omit and fail to perform their statutory duty should be immune from any prosecution.

It would be more reasonable to infer that the Legislature supposed that other offenders could be prosecuted under other statutes, but that the particular offenders thus brought before the court or justice should be punished in the summary proceeding if possible, for the wholesome effect such a summary proceeding would have. It is quite clear that the Legislature deemed that such a willful failure to perform the duty would be a crime, for it did not therein deem it necessary to declare it to be crime. It, however, attempted to prescribe punishment greater than is imposed for misdemeanors. Since the Legislature deemed the offense so grave, it cannot be that it contemplated that such offenders could only be brought to justice provided a proceeding should be instituted to compel the filing of a proper return as therein provided. If the Legislature intended such a proceeding as an exhaustive remedy, I think it would have limited the scope of the proceeding to enforce performance of the duty. Why should the criminality of the act or omission be made to depend upon whether such a summary proceeding is instituted to compel performance of the statutory duty? If the statute were so construed, the omission or act would become criminal only in the event such a summary proceeding should be instituted against the offender to compel performance of his duty, and would not depend upon his unlawful act, but upon whether others should institute such a summary proceeding.

The court rejected the idea that the penalties prescribed (already declared to be unconstitutional) could be imposed after conviction under another section of the statute—

For the reason that the provisions of said section 560 subjecting the offender to liability for a fine or imprisonment or both, are expressly limited to those proceeded against thereunder for a failure to file a proper statement. If the legislative scheme prescribed in section 560 for punishing such offenders for a willful failure to file a proper statement in the first instance were valid, and if such failure would constitute a misdemeanor by virtue of section 751, subd. 12 of the Penal Law, the persons, though proceeded against, under provisions of the Election Law, would be subjected to a fine of $1,000 or imprisonment of one year, or both, while other persons not so proceeded against, but guilty of like crimes, would be punishable, upon conviction, under section 1937 of the Penal Law, which limits the punishment to imprisonment for not more than one year or a fine of not more than $500 or both. I am of opinion, therefore, that the Legislature supposed it was competent for it to authorize the court or justice before whom the summary proceeding was instituted to convict and punish the offender severely and summarily without further trial, and that, for the reason already assigned, those provisions are unconstitutional and void, and that such offenders, like all others guilty of like offenses, are to be prosecuted under any other law, if there be any, applicable to the offense and declaring it to be a crime.

An additional charge in this case was that there had been a conspiracy, by which a subordinate in the employ of the defendant had been induced to make an incorrect statement of certain expenses, as brought out in a previous connection. This conspiracy the court believed to have been proved in the eyes of the law. With respect to the defendant's contention that inasmuch as his act was not a crime in the election law, no crime of conspiracy was really involved, the court pointed out that he had conspired to do an unlawful act; and that under the common law a conspiracy as to an unlawful object or for an injury to the public was indictable, even though the act by a single individual did not constitute a crime. Attention was also called to the

provision in the penal code that a conspiracy to do an act which is injurious to public morals or is a perversion or obstruction of justice or of the due administration of law constitutes a misdemeanor, provided that an overt act is done. Such an act the court believed to have been committed; and all the elements of a conspiracy to have been present. In addition, the law, in its reference to the perversion or obstruction of the due administration of law, specified a conspiracy to prevent the enforcement of duties enjoined by law. The court was also of opinion that the defendant had induced, aided, and abetted the violation of the corrupt practices measure, and was thus made a principal therein.

With respect to the contention of the defendant that the law declaring the acts to be a misdemeanor had regard to primary elections and conventions, as might be indicated in the heading, the court takes a contrary view, holding that on the whole general elections seem included. In any event, there is involved a violation of the penal law, wherein it is stated that an offense having no penalty attached constitutes a misdemeanor. By fair implication, accordingly, the court believes that the acts of the defendant are, so far as no penalty is attached, a misdemeanor.

The court holds, finally, that a habeas corpus proceeding, which is a civil special proceeding, does not lie to test the sufficiency of an indictment or the evidence upon which it is founded, or the right to detain one thereunder, unless in case of total lack of jurisdiction.

In another decision it is set forth that with respect to the filing of statements, it is for the court assuming jurisdiction to determine whether or not this has been properly done. Such is the view taken in Missouri in 1908 in the case of *State* v. *Taylor* (193 Mo. 654, 91 S. W. 917), where the court declined to interfere with the action of the lower court in issuing a writ of prohibition in regard to the examination there pending of a statement of a candidate for the office of collector of revenue.

In *State* v. *Zimmerman* in Wisconsin in 1930 (202 Wis. 69, 231 N. W. 590) a writ of prohibition was granted by the court to restrain a judge from proceeding with a case involving an election to the lieutenant-governorship. The court declared, *inter alia*, that a judge may not assume too much power when the proceedings are fixed by statute, and when the matters in question are to be left to administrative officers of the State, to be conducted with all reasonable speed.[1]

Upon further particulars in connection with the special proceedings has opinion been pronounced. One is with regard to the immunity which is guaranteed in whole or in part in many of the corrupt practices measures to persons who testify in the proceedings. In one decision already considered, namely, *Bradley* v. *Clark* (133 Cal. 196, 65 Pac. 395), it was stated, in interpreting the law of California, that a witness may in general be compelled to testify, whether himself innocent of wrongdoing or not, and can claim no freedom therefrom on the ground that his answer might degrade or incriminate him. If he

[1] A case involving the requirements as to the filing of statements, though primarily having to do with the question of whether a statute is repealed by implication, is that of *Brownell* v. *Holmes* in Massachusetts in 1895 (165 Mass. 169, 42 N. E. 553). A petition was brought in equity to compel the treasurer of a political committee to file a statement as required, and to produce certain books as was also required. The matter was found to hinge upon whether the law of 1892 was repealed by that of 1893, though substantially reenacted by the latter, and amended by that of 1894. The last named laws were repealed by those of 1895. The petitioners claimed that the law of 1894 was only cumulative, and that it did not repeal by implication the law of 1893 in respect to the bringing of petitions. It was held by the court, however, that the petition was brought under the former law, and hence could not be sustained.

is guiltless, he has no immunity at all in respect to the giving of testimony. If he is guilty, he is protected under the statute, which allows his testimony only with the understanding that it will not later be used against him. It was furthermore held proper for the trial court to pass upon the sufficiency of the witness's objections to the offer of testimony, and to decide whether an answer would tend to incriminate a person, or in what matters a witness were privileged.

In a Pennsylvania case in 1907, *Liebel's Election* (33 Pa. C. C. 355, 16 D. R. 595), where a petition had been brought for the auditing of the accounts of a candidate in a primary election for the office of mayor of Erie, such candidate was compelled to testify, the court holding that the proceedings were not a criminal prosecution, and that the constitutional protection accordingly did not apply.

In another case previously noted, namely, *Hawley* v. *Wallace* (137 Minn. 183, 163 N. W. 127), it was held that the constitutional provision that no person may be compelled to testify against himself does not forbid the contestant in an election contest from calling the contestee as a witness, but that when so called the latter may not be required to give such testimony as will incriminate him.

A decision of a different nature on the subject is that of *Ex parte Blair* (*Ex parte Phillips*, *Ex parte Templeton*), which came up in a Federal district court in New York in 1918 (253 Fed. 800). Here three persons, all residents of the city of Detroit, Michigan, had been subpenaed to appear before the United States grand jury in New York to produce records of the Truman H. Newberry senatorial committee respecting a primary campaign for the election of a United States Senator in the State of Michigan. These persons had appeared and had been asked questions regarding the alleged violation in such primary campaign of the Federal corrupt practices statute. The witnesses were asked merely to give certain information, and were told that they might not make reply if their answers would tend to incriminate them. They refused to answer, however, not on this ground, but on the ground that the Federal court concerned had no jurisdiction in the matter, that the statute referred to was unconstitutional, and that no Federal court or grand jury had power under that law to conduct an inquiry as to a primary election for the office of United States Senator. When, on the direction of the court, the witnesses still declined to answer, they were committed to prison. In their application for a writ of habeas corpus, the petitioners gave their reasons for refusing to answer as before. The court in holding the order of commitment valid declared that the constitutional aspects of the matter need not then be passed on; but that the only refusal to answer questions that could be accepted by the court was the one that the testimony thus given might be of a self-incriminatory character.

Still another case on the privileges of witnesses is that of *Ex parte Fox*, which came up in a Federal court in Pennsylvania in 1916 (236 Fed. 861, 150 C. C. A. 123), having to do with the alleged violation of the Federal statute forbidding the contribution by corporations (in this case certain brewers' organizations) to political funds in Presidential and congressional elections. Here on the refusal of a witness to answer questions and produce documentary matter as required by the grand jury, he was adjudged guilty of contempt. As, however, indictments had upon other evidence been returned against the corporations concerned, the different questions involved

need not then be passed upon, the writs, however, being retained pending the trial of the indictments to prevent complications. It was believed that all the matters involved could be determined in a regular trial.[1]

In some of the special proceedings it is provided that the court is to include in a judgment of ouster or the nullification of an election, an award of the office in respect to which the proceedings have been brought, to the candidate receiving the next highest number of votes. Where such a provision has come under judicial examination, it has usually been held to be invalid. The reason given for this is simply, as stated in a case previously referred to, namely, *State* v. *Bates* (102 Minn. 104, 112 N. W. 1026, 12 Ann. Cas. 105), that the office would thus be bestowed upon a person who had never been elected to it.

In another Minnesota case, also previously given, *Flaten* v. *Kvale* (146 Minn. 463, 179 N. W. 213), the court in declaring that a vacancy is to be duly filled according to law, spoke thus:

> One purpose of the Corrupt Practices Act is to prevent a candidate from obtaining a nomination or election to office by employing false statements or corrupt means to influence voters during a campaign. The Act operates upon those guilty of a violation. Its purpose is to exclude all violators of its provisions. * * * [It does not] authorize or empower a court to declare a candidate nominated who failed to receive a plurality of the votes cast.

In a Missouri case, likewise considered in a prior connection, *State* v. *Towns* (153 Mo. 91, 54 S. W. 552), the court in rendering an opinion, refers to the section of the Constitution (Art. VI, sec. 39), providing for the election of county clerks (the office in question here), and states:

> When the defendant is ousted, the office, *ipso facto*, becomes vacant. In case of vacancies in such offices as this, the Governor is given the power by the Constitution and statutes to fill the vacancy. The Act of 1893 does not confer the power of appointment of a successor upon this court. It requires the court to enter a judgment awarding the office to a designated person, who never was elected or appointed * * * The Act awards the office to the unsuccessful candidate, and in so doing it violates the provisions of the Constitution.

In a case in Kentucky, likewise already inquired into, *McKinney* v. *Barker* (180 Ky. 526, 203 S. W. 303, L. R. A. 1918 E, 581) the reasoning is similar, while some of the consequences of holding otherwise are pointed out. The court refers to the section of the Constitution (sec. 99) providing for the election of justices of the peace (the office in question); and finds from an examination of the authorities that an "election" means the choosing or selection of a person to fill an office, and that it is brought about only by the giving to such a person a plurality or majority of the votes cast. The court continues:

> From this unanimous and unbroken line of judicial definitions of what is included in the term, it cannot be gainsaid that the idea of an election in all republican forms of government is that no one can be declared elected, and no measure can be declared carried, unless he or it receives a majority or a plurality of the legal votes cast in the election, and this was the understood meaning, definition, and scope of the term "election" at the time of the adoption of the Constitution, for it must be remembered that those constituting the majority or plurality not only vote for the candidate or measure of their choice, but they also vote against the other candidate or candidates, and against the opposing side of the submitted measure. * * *

[1] The matter of the immunity of witnesses in the special proceedings is also a part of the general law on the subject. There are a number of decisions in this regard in connection with corrupt practices at elections other than those particular ones under our purview.

To hold otherwise would not only be to sanction a perversion of the plain intent and meaning of the Constitution, but it would enable the Legislature to strike a blow at the very foundation stone of our boasted republican form of government, for when we cease to be governed and have public affairs administered by officers elected by a majority or a plurality of the legal votes of those entitled to exercise the right of suffrage, we turn aside from the idea of such form of government and put its administration into the hands of the minority, even the smallest. It was to prevent this, as we believe, that the Constitution declared that "all elections should be free and equal"; free in that every one entitled to vote should have a reasonable opportunity to do so, a reasonable manner of doing so, etc., and equal in that every vote cast should have its decisive effect in the selection or choice to be made at the election.

The court then declares that the legislature cannot invade the constitutional guaranties under the guise of regulation; and refers to the section of the Constitution (sec. 151), where provision is made for the deprivation of office of a person guilty of wrongdoing or corrupt practices, but where no mention is made of the right to elevate to an office a candidate who has not been elected thereto. The court goes on:

Applying this rule to the case here, when the Constitution authorized the Legislature to enact statutes concerning the safeguards mentioned in the section referred to (corrupt practices), it confined the penalty to punishing and depriving of office the guilty party only, and the Legislature is without authority to add other consequences thereto, as is attempted in the Corrupt Practices Act under consideration, especially when to do so would violate other provisions of the Constitution, as we have hereinbefore seen. To our minds, it requires but slight consideration to demonstrate that if the Act in question should be upheld as enacted it would afford greater opportunities for corrupt practices than to discard the proviso altogether. Under the Act as passed the scheming and designing politician, or the corruptionist, could persuade or induce by deception a popular candidate to neglect complying with the statutes and procure compliance therewith by a much less qualified, yet more pliant and perhaps corrupt candidate who might receive but few votes and yet be elevated to the office. Indeed, it would be possible for an elector to elevate himself to the office by writing his own name upon the ballot and stamping opposite it, since the requirements of the Corrupt Practices Act would not apply to him. Such a result was never contemplated as being possible under the American idea of an election, and we are unwilling to uphold a statute which would permit it. * * *

The power of the Legislature [is denied] to visit upon the innocent voter the consequences of another's violations, stifling his voice, and foisting upon him and others comprising a majority or plurality of the voters in the election, an officer whom they had defeated for the office.

The ruling in the foregoing decision is followed in another Kentucky case, that of *Hardin* v. *Horn* in 1919 (184 Ky. 548, 212 S. W. 573), a case which has already been referred to in a previous connection. Here in contest proceedings instituted on the ground of illegal expenditures and incorrect statements in connection with both the primary and the general election, contrary to the provisions of the law, the court took the view that in the event of an election which was void, there was merely a vacancy created in the office concerned. The votes cast therein for the successful candidate, the court declared, were not void, as the voters had done their proper and full part; and the name of the candidate on the ballot could not be considered otherwise than as proper. It was also held to be the duty of the court, not to declare an election void in the first instance because of the violation of the statute but to declare it so only when such violation appeared in a contest proceeding.

In two cases in Kentucky already considered, namely, *Ridings* v. *Jones* (213 Ky. 810, 281 S. W. 999) and *Hart* v. *Rose* (255 Ky. 576, 75 S. W. (2) 43), like rulings are adopted; such is also true of

Owsley v. *Vaughn* in 1926 (213 Ky. 817, 281 S. W. 1002), involving an election contest in respect to membership in a board of education. (See also *Million* v. *Goble*, 210 Ky. 771, 276 S. W. 830; 211 Ky. 30, 276 S. W. 276, 1935).

In this State, however, a different ruling is applied to primary elections. In the case of *Charles* v. *Flanary* in 1921 (192 Ky. 511, 233 S. W. 904), on the proof of illegal practices on the part of the successful candidate for the office of county judge in a primary election, the candidate receiving the next highest number of votes was given the place on the ballot, as provided for by the law. The court held the provision to be valid and constitutional in this case, distinguishing it from *McKinney* v. *Barker*, in that the latter was an election in the usual sense of the term, and following the State rulings that a primary election is not part of an "election." The legislature, the court held, might enact such a provision as to a primary election, this manner of election not being known at the time of the adoption of the Constitution, and being simply a form of party machinery.

The court also held in this case that the statute did not interfere with the provision of the Constitution (sec. 151) authorizing the deprivation of office of one who has secured by corrupt practices a nomination or election.

In one case, a case already considered, *State* v. *Evans* (229 Wis. 304, 282 N. W. 14), where it was sought to have an election declared void, the incumbent of the office ousted, and the office declared vacant, the court in commenting upon the provisions that in such proceedings the will of the electorate was if possible to be given effect, the successful candidate having had a clear majority of the votes, stated:

> If such a conclusion was warranted, then on that theory, if there had been a greater majority in favor of the violator after violations of even greater extent and corrupt influence, there would be less occasion for holding that the real will of the electorate had been defeated by the illegal practices. This would obviously be absurd.

Another measure included in the proceedings as a supplemental judgment has likewise met with judicial disfavor, so far as is indicated by the two decisions rendered upon the subject. This is the provision which directs the trial court, in penalizing a candidate found guilty of violation of the corrupt practices measures, in case the office in question is of a legislative character, to transmit its findings to the body concerned, sometimes, as in the present instance, through the secretary of state, instead of declaring the election void. Such a provision is regarded as being distinctly in contravention of the provisions of the Constitution giving to a legislative body alone power to pass upon the election of its members—all despite the evident endeavor of the lawmakers to conform to the Constitution by withholding from the court the authority to declare the election void and, instead, requiring it simply to report its findings to the legislative body, which could be expected to take whatever action was called for in the circumstances.

One case involving the matter came up in Massachusetts in 1916, that of *Dinan* v. *Swig* (223 Mass. 516, 112 N. E. 91). Here on a petition to investigate the election of a candidate for membership in the general court on the ground of violation of the statute, the three judges designated for the hearing referred to the court, as they were

permitted to do, the question whether the statute was constitutional in imposing upon that court the duties with regard to an election for membership in the House of Representatives. The court in rendering judgment quoted the provision of the Constitution (Art. X, sec. 3) that "the House of Representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in this Constitution." The court then proceeds:

> The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject. The grant of power is comprehensive, full, and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the Legislature to delegate or share that power. It must remain where the sovereign authority of the State has placed it. General phrases elsewhere in the Constitution which in the absence of an explicit imposition of power and duty would permit the enactment of laws to govern the subject, cannot narrow or impair the positive declaration of the people's will that this power is vested solely in the Senate and House, respectively. It is a prerogative belonging to each House, which each alone can exercise. It is not susceptible of being deputed.
>
> If the statute should be construed as conferring upon the three judges of the Superior Court final jurisdiction to pass upon the issue whether a successful candidate has been guilty of corrupt practices, it would be a derogation of the express grant of the Constitution, because it would deprive each branch of the Legislature of the unlimited right to be "the judge of the * * * elections, and qualifications of its own members." No legislative body can be the sole judge of the elections and qualifications of its members when it is obliged to accept as final a decision touching the purity of the election of one of its members made by another department of the government in an inquiry to which that legislative body is not a party, and which it has not caused to be instituted.
>
> The proceeding created by the instant statute does not emanate from either branch of the Legislature. It is set in motion only by the initiation of five or more voters. It may result in sending to the legislative branch, to which the defendant has been elected, a decree setting forth the determination of the judges that a corrupt practice has been committed. That decree may be ignored by the branch of the Legislature to which it is sent. There is no legal compulsion resting upon that branch to take action respecting such a decree. Only its sense of self-respect and duty to the whole Commonwealth to purge itself of a member unworthy of his office would impel it to pay heed to the decree. If action should be taken, it still would be upon that branch of the Legislature to exercise its constitutional prerogative and to examine the issue for itself and to decide whether the election and qualification of its member were such that he ought to be expelled and the election declared void. That decision, when made by the branch of the Legislature concerned, would stand as final and could not be disputed or revised by any court or authority. * * * Such decree would nullify the efficacy of the findings of the facts set forth in the decree of the three judges of the Superior Court.
>
> The Constitution confers upon each branch of the Legislature by necessary implication the power to determine for itself the procedure as to the settlement of controversies touching the election and qualification of its own members, and the ascertainment of all facts relative thereto, and to change the same at will. That established by one branch might differ from that adopted by the other. But the statute, so long as it stands, imposes upon both houses uniformity of procedure so far as concerns this particular matter. One branch cannot ignore it without a repeal of the statute. A repeal can be accomplished by affirmative vote of both branches and approval of the Governor. Yet the Constitution plainly gives to each branch of each successive Legislature an untrammelled power to proceed in its own manner and according to its own judgment without seeking the concurrence or approval of the other branch, or of the executive. This discretion to determine the method of procedure cannot under the Constitution be abrogated by action taken by an earlier Legislature.

With regard to the provision of the Constitution (Art. II, sec. 3), permitting the giving of advice by the judiciary to the legislature on certain matters, as bearing upon the situation, it was held that such provision authorized advice only on certain occasions and only on

questions of law, and did not grant to courts functions vested in other departments. With regard to the further provision allowing the Senate and House of Representatives to determine all cases where their rights or privileges were concerned by committees "or in such other way as they may respectively think best," the court has this to say:

> But it cannot require the judiciary as a coördinate department of government to hold a trial and render a decision which in its nature must be purely tentative or advisory and wholly subject to its own review, revision, retrial, or inaction. This would be imposing upon the judicial department of the government the investigation of a matter not resulting in a judgment, not finally fixing the rights of parties, and not ultimately determining a state of facts. It would subject a proceeding arising in a court to modification, suspension, annullment, or affirmation by a part of the legislative department of government before it would possess any definitive force. Manifestly, this is in contravention of Article 30 of the Declaration of Rights which marks the entire separation of the legislative and judicial departments of government.

In the second case on the subject, one coming up in Montana in 1914, namely, *State* v. *District Court* (50 Mont. 134, 145 Pac. 721), there were involved certiorari proceedings on the part of the State with respect to the refusal of a lower court to issue a mandamus order to compel a contest of an election for the office of State senator. In dismissing the case, the court stated that the provision of the corrupt practices law which directed a court to certify its findings with regard to contests for legislative offices to the secretary of state, by which official they were to be transmitted to the proper legislative body, was unconstitutional, inasmuch as the Constitution of the State (Art. IX, sec. 5) declared that each house of the legislature was to be the "judge of the elections, returns, and qualifications of its members." The court likewise held, which it deemed a very important matter, that the legislature could not make a judicial branch of the Government an agent for the gathering of evidence and of making findings; or, in other words, that the legilature could not delegate powers to a court.

In this connection, however, it may be noted that in a decision already considered, *Hawley* v. *Wallace* (137 Minn. 183, 163 N. W. 127), the claim that the court in the special proceedings was without jurisdiction, a city council being, according to its charter, the judge of the election of its members, was denied.

With respect to the provision of the statutes giving inquisitorial powers to the court in contest proceedings, and allowing it a certain discretion when "under the circumstances it seems to the court unjust that the candidate shall forfeit" his election, it has been held in the case of *Dart* v. *Erickson*, already considered (188 Minn. 313, 248 N. W. 706), that this was not an unconstitutional delegation of political and legal power to the court, the expression "unjust" being regarded in the intendment of the legislature as equivalent to "unlawful."

There are a few special rulings regarding contest proceedings. The meaning of the expression "return day of election" with respect to which the time for the institution of such proceedings may be limited under some of the corrupt practices enactments, is one that has had judicial interpretation. In the case of *Wilkinson* v. *Le Combe*, a Montana case in 1921 (59 Mont. 518, 197 Pac. 836), where it was alleged that bond had failed to be provided within the 40 days specified by the law for the institution of contest proceedings, here in regard to an election for the office of sheriff, the court, in dismissing the proceedings, and holding that the bond as well as the petition for contest

had been filed within the 40 days required, declared that the "return day of election" mentioned in the statute meant the day on which the returns of an election were delivered to the election board for the purpose of canvassing.[1]

A ground of complaint, to be relied on in an election contest, must be duly alleged in the petition for a contest, according to the decision in *Craft* v. *Davidson* and *Williams* v. *Davidson*, in Kentucky in 1920 (198 Ky. 378, 224 S. W. 1082), a case involving an election to membership in a city board of councilmen, with respect to the failure of a candidate to file a statement of expenses.

A further matter passed upon in respect to contest proceedings relates to whether the failure to comply with the corrupt practices law at a primary election invalidates the results of a general election. On this point in the case of *Hardin* v. *Horn*, a Kentucky case already considered (184 Ky. 548, 212 S. W. 573), a negative view is taken. The court here does not believe that the statute declares or implies that an offense committed in connection with a primary election renders void the election of the person offending in the subsequent general election, when the name of such person has been duly printed on the ballot. The court is of the opinion, moreover, that the special laws relating to primary elections provide fully for contest proceedings, but only with regard to a contest in connection therewith, and that it was the intention of the law to secure a speedy settlement of the question at issue at that election. Hence, the corrupt practices act was to be looked upon as referring to violations in connection with the general election, and not to violations in connection with a primary election.

It may be remarked, likewise, that in two decisions, both in Kentucky in 1917, and both involving the failure to file statements of expenses within the time prescribed by the statute, namely, *Ward* v. *Howard* (177 Ky. 38, 197 S. W. 506) and *Matthews* v. *Stephens* (177 Ky. 143, 197 S. W. 544), one with respect to several county offices, and the other with respect to the office of coroner in a primary election, it was held that the proceedings prescribed in the corrupt practices measure did not modify or amend the general law as to the conduct of contests.

It has also been held in a Kentucky case, one already considered, *Judd* v. *Polk* (267 Ky. 408, 102 S. W. (2), 325), that the violation of the corrupt practices law does not *ipso facto* render an election void; but that contest proceedings are necessary to that end.

A lone decision, bearing upon the corrupt practices laws in an unusual way, is concerned with the powers of the Governor of a State to remove an officeholder charged with violation of these laws. In *Eckern* v. *McGovern*, a Wisconsin case in 1913 (154 Wis. 157, 142 N. W. 595, 46 L. R. A. (n. s.) 796), there was a suit in the form of an equitable action for relief by the State insurance commissioner to retain his office after forcible removal therefrom by the Governor, on the alleged ground that the former had served on a political committee or had managed a political campaign in contravention of the provisions of the law (such officers being forbidden "to serve on or

[1] In a case in Oregon in 1913, namely, *Tazwell* v. *Davis* (64 Oreg. 325, 130 Pac., 400), involving illegal voting in a judicial election, the phrase "return day" is held to mean the day when the official canvass begins, or after the official declaration of the result. It was also held in this case that an appeal from the judgment rendered in the special proceedings for an election contest is not permissible, in the absence of authorization in the statute therefor.

under a political committee or as manager of a political campaign for any party or candidate"), with his replacement by an officer of the Governor's selection. It was the conviction of the court that the action of the Governor in the matter was not reviewable by it, even though there had been great haste in his action, with short notice to the ousted official, and with refusal to hear due witnesses.[1]

[1] There have been in addition a certain number of decisions in respect to whether the contents of the corrupt practices are sufficiently referred to in their titles—a requirement to such effect being found in the Constitutions of most of the States of the Union. In the case of *Likins's Petition* in Pennsylvania in 1909 (223 Pa. St. 456, 72 Atl. 862; see also 37 Pa. Sup. Ct. 625, 17 D. R. 427, 34 Pa. C. C. 513, 223 Pa. St. 468, 72 Atl. 862, 37 Pa. Sup. Ct. 637), where a petition had been presented for the auditing of the accounts of a certain political treasurer as provided for by the law, it was claimed that the statute was in contravention of the Constitution in that it was a different act from that referred to by the Governor of the State in his call for a special session of the legislature. The court held, however, that the act was sufficiently embraced in the proclamation of the Governor, the wording being plain, and the legislature having enacted the law asked for. The court believed the purpose of the law to be to reenforce certain provisions of the Constitution, declaring: "Former legislative enactments were deemed inadequate, and this was a step forward as an added requirement to safeguard the ballot box from the pollution of fraudulent votes, by making more specific and by defining with greater particularity 'the use to which money may be applied by candidates, political committees, and committees in political campaigns both for nominations and for elections.'" Other decisions of similar tenor are: *Liebel's Election* (33 Pa. C. C. 355, 16 D. R. 595, 1907); *State* v. *Bethea* (61 Fla. 60, 55 So. 550, 1911); *State* v. *Paris* (179 Ind. 446, 101 N. E. 497, 1913); *People* v. *Gansley* (191 Mich. 357, 158 N. W. 195, Ann. Cas. 1918E 165, 1916); *State* v. *District Court* (— Mont. —, 96 Pac. (2) 271, 1939). See also *Commonwealth* v. *Rentschler* (8 Lack. Jur. 139, 11 D. R. 203, 26 Pa. C. C. 139, 1902); *Ashley* v. *Wait* (228 Mass. 63, 116 N. E. 961, Ann. Cas 1918E, 865, 8 A. L. R. 1463, 1917); *State* v. *Nichols* (50 Wash. 529, 97 Pac. 728, 1908); *Byrne's Case* (34 Pa. C. C. 513, 17 D. R. 427, 1907). See in addition 18 American Jurisprudence, §§ 339–341 (1938).

TABLE OF CASES CITED

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