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Chapter CLXXI.

GENERAL ELECTION CASES, 1923 TO 1925.

1. Cases in the first session of the Sixty-eighth Congress. Sections 160, 163.
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160. The New York election case of Chandler v. Bloom, in the Sixty-eighth Congress.

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The Elections Committee in an unsustained report held that illegal votes, the nature of which could not be ascertained, should be subtracted pro rata from the votes of the contestant and contestee.

An amended notice of contest having been filed by contestant was answered by contestee.

Instance in which the contestant in an election case was permitted to address the House in his own behalf, and closed the debate.

On February 28, 1924,[1] Mr. Richard N. Elliott, of Indiana, from the Committee on Elections No. 3, submitted the report of a majority of the committee in the New York case of Chandler *v.* Bloom. Samuel Marx, who had been elected to the House from the nineteenth district of the State of New York on November 7, 1922, died before Congress convened, and a special election was held on January 30, 1923, to fill the vacancy. The official returns gave the contestee 17,909 votes and the contestant 17,718 votes, a plurality for the former of 191 votes. An official recount of the ballots made pursuant to State law upon application of the contestant gave contestee 17,802 undisputed ballots and contestant 17,676 undisputed ballots, a majority for the former of 126.

[1] First session Sixty-eighth Congress, House Report No. 224.

The remaining ballots were canvassed by the committee of the House of Representatives, which awarded 55 additional votes to the contestee and 28 additional votes to the contestant, a net majority of 153 votes in favor of the sitting Member.

On March 3, 1923, the contestant served on the contestee a notice of contest setting forth numerous grounds of contest, and on May 10, 1923, an amended notice of contest setting forth additional grounds of contest. The grounds of contest as presented in both notices of contest were considered by the committee and may be divided into two classes, one relating to illegal voting by persons not properly registered or failing to comply with State election laws and the other to charges of frauds and irregularities in certain precincts designated in the notice of contest.

The election laws of the State of New York require registration of voters and provide for the transfer of voters removing from one precinct to another upon application to the board of elections. Fifteen voters were shown to have removed from the district in which they were registered and in which they had voted at the regular election, and to have voted in other precincts at the special election without having secured such transfers from the board of elections. The majority of the committee find:

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

The election laws of the State of New York also require the signature of voters in the official registry before voting. It was shown that 6 voters failed to comply with this requirement of the law, and the majority find—

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

The minority fall to controvert either the findings of fact or the conclusions reached by the majority on these questions. On the remaining issues in the case, however, the majority and minority reports divide sharply.

The contestant contended that certain precincts of the eleventh and seventeenth assembly districts should be rejected because: 1. The board of inspectors was illegally constituted. 2. Unused ballots were stolen and substituted for voted ballots. 3. Illegal votes were counted. 4. Electioneering and pictures of the sitting Member were permitted within 100 feet of the polling place. 5. Unsworn persons handled the ballots. 6. Workers for contestant were intimidated and driven away. 7. Representatives of contestee were under the influence of liquor and assumed an attitude amounting to intimidation. 8. Ballots were improperly counted. 9. Inspectors failed to report unused ballots which were missing.

These charges are taken up by the minority report and denied in detail, both as unsupported by evidence and as being without material effect upon the validity

of the returns, and resolutions are recommended denying the election of the contestant and confirming the right of the sitting Member to his seat.

The majority report makes no detailed reference to specific charges preferred by the contestant but concludes:

> That in the twenty-third election district of the eleventh assembly district and in the thirtieth and thirty-first election districts of the seventeenth assembly district there was such an utter, complete, and reckless disregard of the provisions of the election laws of the State of New York involving the essentials of a valid election, and the returns of the election boards therein are so badly tainted with fraud that the truth is not deducible therefrom, and that it can be fairly said that there was no legal election held in the said election districts.
>
> Consequently in accordance with the universally accepted principles of the law governing contested elections and in conformity with a long line of congressional precedents, the committee is of the opinion that the entire returns of the twenty-third election district of the eleventh assembly district and the thirtieth and thirty-first districts of the seventeenth assembly district should be rejected.

Rejecting the returns from these three precincts, and deducting from the total vote of the contestant the three votes illegally cast for him, and from the total vote of the contestee the 11 votes illegally cast for him in the remaining precincts, the majority conclude that the contestant received 17,504 votes and the contestee 17,280 votes, a majority of 224 votes for the contestant.

The majority of the committee therefore recommend to the House the adoption of the following resolutions:

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

The report was debated at length in the House on April 10.[1] On motion of Mr. Elliot, by unanimous consent, the Members in charge of the time allotted for debate were permitted to yield time to the contestee and the contestant, respectively, and the latter closed the debate.

In the course of the debate emphasis was laid upon the fact that the New York delegation in the House was almost equally divided politically and the unseating of the sitting Member would change the political complexion of the delegation by a majority of one Member, a situation which might prove material from a political point of view in event of the pending presidential election being thrown into the House by the failure of the Electoral College to make a choice. Excerpts from circular letters by both party whips urging members of their respective parties to be present in the House when the case was to be decided were read, and the impartiality of the House in deciding past election contested-election cases without regard for party considerations was discussed at length.

The question being first taken on the substitute proposed by the minority, the substitute was agreed to, yeas 210, nays, 198. The resolution as amended by the substitute was then agreed to, yeas 209, nays 198.

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[1] Record, p. 6034; Journal, p. 419.

It is to be noted that Mr. Bloom, the sitting Member whose title to his seat was thus sustained, was a member of the minority party in the House, while Mr. Chandler, the unsuccessful contestant was a member of the majority party.

161. The Georgia election case of Clark v. Moore, in the Sixty-eighth Congress.

No evidence having been adduced to sustain any allegation of contestant, the House confirmed the title of the sitting Member.

Instance in which an elections committee recommended that unwarranted contests be discouraged.

On March 26, 1924,[1] Mr. John M. Nelson, of Wisconsin, from the Committee on Elections No. 2, submitted the report of the committee on the Georgia case of Don H. Clark *v.* R. Lee Moore.

The following statement of the case appears in the report:

> At the election held in the first congressional district of the State of Georgia on November 7, 1922, according to the official returns R. Lee Moore, the contestee, who was the Democratic candidate, received 5,579 votes; P. M. Anderson, running as a Republican candidate, received 426 votes; Don H. Clark, running as a Republican candidate, received 196 votes. As a result of these returns R. Lee Moore, the contestee, was declared elected and a certificate of election was duly issued him by the proper State officials.

The contestant in his notice of contest alleged various errors, frauds, and irregularities, including the burning of ballots, failure to open the polls, and conspiracy to prevent his name from appearing on the ballot.

The committee, considering each charge separately, are unanimous in reporting that no evidence was adduced in support of any charge set forth in contestant's brief.

After quoting excerpts from contestant's brief, the committee recommend:

> The above quotations are typical of the nature of the contestant's brief in this case, and your committee is of the opinion that such loose, extravagant, and unfounded charges being made the basis for an election contest with the consequent expense to the Government should be discouraged in the future.

The committee therefore find that the contestee was duly elected and submit resolutions declaring contestant not elected and confirming the title of the sitting Member to his seat.

The report was called up in the House on June 3,[2] 1924, and agreed to without debate or division.

162. The Illinois election case of Gorman v. Buckley, in the Sixty-eighth Congress.

A contestant having failed to take or file testimony within the time required by law, the House without further examination confirmed returned Member's title.

Form of motion to strike depositions from the record.

Instance wherein the House declined to seat a contestant belonging to the majority party in the House.

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[1] First session Sixty-eighth Congress, House Report No. 367.

[2] Record p. 10323; Journal, p. 369.

Application of a rule of the Committee on Elections.

On May 13, 1924,[1] Mr. Richard N. Elliott, of Indiana, from the Committee on Elections No. 3, submitted the report of the committee on the Illinois case of John J. Gorman *v.* James R. Buckley.

At this election there were three candidates, but the contest was between contestant and the sitting Member, who had been returned by a plurality of 42 votes. Contestant served notice of contest on January 2, 1923, alleging error, mistake, and irregularity, to which contestee answered January 27, 1923.

Following the printing of testimony and filing of briefs, the contestee filed the following motion to strike depositions from the record:

To the honorable the House of Representatives of the Sixty-eighth Congress of the United States:

Now comes James R. Buckley, contestee herein, by William Rothman, his attorney, and moves that the depositions herein and each of them filed herein by the commissioners respectively designated by the parties to hear and take the testimony be stricken from the record, on the ground that said commissioners failed to file the said depositions with the Clerk of this House, "without unnecessary delay" after the taking of the same was completed as required by section 127 of the Revised Statutes as amended, in that the same were not filed within 30 days after the completion of the taking of mid testimony as required by the rules of the Committee on Elections of this honorable House; and in this connection the contestee respectfully represents that the taking of testimony herein was completed on April 28, 1923, at the hour of 12:30 o'clock p.m., at which time the further hearing of the said cause was adjourned sine die; that the only further proceedings had in said cause subsequent to said April 28, 1923, were hearings which were had before his honor, Judge Wilkerson, in the United States district court, which were had on June 2 and June 4, 1923; and that no further proceedings of any kind or nature were had in the said cause subsequent to said June 4, 1923; and that the depositions filed herein by the commissioner designated by the contestant were filed with the Clerk of this honorable House on, to wit, November 5, A.D. 1923, more than 191 days following the completion of the taking of testimony and more than 154 days after the date when the last proceedings of any sort were had in said contest.

Dated at Chicago, Ill., November 20, 1923.

The committee report as findings of fact:

The contestee's answer was served on contestant January 27, 1923. The act of Congress approved March 2, 1875 (U. S. Stat. L., vol. 18, ch. 119, p. 338), provides that in all contested-election cases the time allowed for taking testimony shall be 90 days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first 40 days, the returned Member during the succeeding 40 days, and the contestant may take testimony in rebuttal only during the remaining 10 days of said period.

In this case, therefore, the contestant, under said law, was allowed until March 9 in which to take his testimony in chief and the law required that the taking of all testimony should be completed on April 27, 1923. As a matter of fact, however, the contestant took only a part of his testimony in chief in the first 40 days, which expired on the 9th day of March, 1923. The contestee took no testimony in the next 40 days. During the 10-day period at the end of the 90 days the contestant took some additional testimony, which was not in rebuttal, but was intended as testimony in chief. The testimony in this case was filed with the Clerk of the House of Representatives, on the 5th day of November, 1923.

After citing the Federal statute providing that all testimony in contested-election cases shall be taken within 90 days and forwarded "without unnecessary delay" to the Clerk of the House, and quoting rule 8 of the Committee on Elections,

[1] First session Sixty-eighth Congress, House Report No. 722.

construing the phrase "without unnecessary delay" to mean within 30. days of completion of taking testimony, the committee reports:

> Your committee finds that the contestant in this case ignored the plain mandate of the law and the rules of the Committees on Elections of the House and that he has no standing as a contestant before the House of Representatives.

In conclusion the committee find—

> That the contestant, not having complied with the provisions of the law governing contested-election cases, has no case which can be legally considered by the committee or by the House of Representatives.

The committee therefore recommend the adoption of resolutions declaring the contestant was not elected, and confirming the title of sitting Member to his sent, which were unanimously agreed to by the House, June 3, 1924, without debate.

163. The New York election case of Ansorge v. Weller in the Sixty-eighth Congress.

The House sustained a recount authorized by and conducted pursuant to State laws.

Objections by contestee that notice of contest was insufficient were disregarded by the elections committee.

Form of resolution providing for inspection of contested ballots.

Form of resolution providing program of procedure in recount of contested ballots.

While not considering the committee bound by stipulations and agreements of parties, such agreements were substantially sustained by the committee.

On May 14, 1924,[1] Mr. Clint R. Cole, of Ohio, from the Committee on Elections No. 1, submitted the report in the New York case of Martin C. Ansorge *v.* Royal H. Weller.

Sitting Member had been returned by an official plurality of 245 votes, which the contestant attacked on the grounds that—

> The count, canvass, and handling of the ballots in the election districts of the said congressional district were not conducted in the lawful, orderly, and proper manner provided for by the election law to prevent fraud and unintentional error.

A motion by contestee that contestant's petition be dismissed for the reason that his notice of contest was—

> insufficient in that it contained no facts or proof whatsoever to raise any presumption whatever of mistake, irregularity, or fraud in the original count or canvass,

was disregarded by the committee.

A recount of the ballots, made by both parties, pursuant to the election laws of the State of New York, gave the contestant a plurality of 115 votes over the contestee on conceded ballots, with 820 ballots remaining in dispute.

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[1] First session Sixty-eighth Congress, House Report No. 756.

On March 31, 1924,[1] the following resolution providing for a recount of the 820 disputed ballots was agreed to by the House:

Resolved, That John Voorhis, Charles E. Heydt, James Kane, and Jacob Livingston, constituting the board of elections of the city of New York, State of New York, their deputies or representatives, be, and they are hereby, ordered to appear by one of the members, the deputy, or representative, before Elections Committee No. 1 of the House of Representatives forthwith, then and there to testify before said committee or a subcommittee thereof, in the contested election case of Martin C. Ansorge, contestant, *v.* Royal H. Weller, contestee, now pending before said committee for investigation and report; and that said board of elections bring with them all the disputed ballots marked as exhibits cast in every election district at the general election held in the twenty-first congressional district of the State of New York on November 7, 1922. That said ballots be brought to be examined and counted by and under the authority of said Committee on Elections in said case; and to that end, that the proper subpoena be issued to the Sergeant at Arms of this House commanding him to summon said board of elections, a member thereof, or its deputy or representative, to appear with such ballots as a witness in said case; and that the expense of said witness or witnesses, and all other expenses under this resolution, shall be paid out of the contingent fund of the House, and that said committee be, and hereby is, empowered to send for all other persons or papers as it may find necessary for the proper determination of said controversy; and also be, and it is, empowered to select a subcommittee to take the evidence and count said ballots or votes, and report same to Committee on Elections No. 1, under such regulations as shall be prescribed for that purpose; and that the aforesaid expense be paid on the requisition of the chairman of said committee after the auditing and allowance thereof by said Committee on Elections No. 1.

The ballots in question having been brought before the committee, counsel for contestee submitted a program of procedure which was agreed to by all parties and adopted by the committee, as follows:

Resolved, That in order to expedite the work of the committee, counsel for the respective candidates be, and they hereby are, instructed, during the next hour, to arrange the various ballots which have been brought from New York to Washington into the following piles:

1. Ballots marked otherwise than with a pencil having black lead—that is, ballots marked in ink or with a blue crayon or with an indelible pencil, etc.
2. Ballots bearing a mark for the office of Congressman challenged on the ground that the lines of the alleged cross mark do not cross—i.e., alleged y's, v's, and t's.
3. Ballots bearing a cross mark where the lines cross but challenged because of extra lines forming part of the cross, or because of other irregularities in character or form of the mark.
4. Ballots bearing a cross mark outside of the voting squares.
5. Ballots bearing two cross marks for the office of Congressman, irrespective of whether such marks were made by the voter or claimed to be reprints or impressions.
6. Ballots bearing erasures, smudges, or ink marks.
7. Ballots bearing any name written on the ballot.
8. Ballots challenged because they appear to have been torn by some one.
9. Ballots other than the above which are challenged by either party because of extra lines, dots, and dashes disconnected with the cross mark.
10. All other ballots.

During the argument before the committee counsel for both parties agreed as to a number of the ballots in dispute as belonging to one party or the other, or as being void or remaining in dispute.

Upon the close of argument the committee proceeded, in executive session, to divide the ballots into the 10 groups agreed upon and 2 additional groups.

[1] Record, p. 5271.

As to weight accorded stipulations by parties and their counsel, the report says:

While not considering that the committee was bound by the stipulations and agreements of counsel as to good, void, and protested ballots, the members of the committee have substantially sustained the agreements of counsel.

The final canvass by the committee is tabulated as follows:

	Good ballots for contestant.	Good ballots for contestee.
Class 1	17	8
Class 2	12	20
Class 3	12	7
Class 4	.....	1
Class 5	2	33
Class 6	30	43
Class 7	2	2
Class 8	.....	1
Class 9	5	15
Class 10	29	70
Class 11	7	29
Class 12	64	69
Envelopes	7	14
Total	187	312
New York recount totals	31,892	31,777
Grand total	32,079	32,089

The sitting Member having received a plurality of 10 votes thus tabulated, the committee recommended the adoption of the following resolutions:

Resolved, That Martin C. Ansorge was not reelected a Representative from the twenty-first congressional district of the State of New York and is not entitled to a seat herein.

Resolved, That Royal H. Weller was duly elected a Representative from the twenty-first congressional district of the State of New York and is entitled to retain a seat herein.

On May 27, 1924,[1] the resolutions were unanimously agreed to by the House without debate.

164. The New York election case of Frank v. LaGuardia, in the Sixty-eighth Congress.

Contestant failing to take testimony within time provided by law, the House discharged the committee from further consideration of the case.

Laches of contestant in prosecuting contest having rendered impossible the submission of final report by elections committee within time provided by rule of the House, the committee declined to consider the merits of the case and were discharged.

Stipulation by parties in the nature of an agreement can not waive plain provisions of the statutes.

Procedure to be followed where parties require time beyond that provided by law.

While constitutional provisions exempt the House from the operation of the law relating to the taking of testimony in election cases, such law is binding upon the parties thereto.

[1] Journal, p. 593; Record, p. 9631.

Effort by opposing counsel to profit by laches authorized in void stipulations, to which he was himself party, were criticised as unethical.

In the absence of evidence of fraud or irregularities, proof of which would change the result of the election, the committee declined to subpoena ballots.

The House and its committees are not to be considered boards of recount, and returns made by boards, charged with that duty by the State in which the election is held, are presumed correct until impeached by proof of irregularity or fraud.

On January 7, 1925,[1] Mr. John M. Nelson, of Wisconsin, from the Committee on Elections No. 2, submitted the report of the committee in the New York case of Henry Frank *v.* Fiorello H. LaGuaxdia.

The official returns gave contestee 8,492 votes, contestant 8,324 and all other candidates a total of 5,358 votes, a plurality of 168 votes for the sitting Member.

On December 28, 1922, the contestant served notice of contest setting forth numerous grounds for contest of a general nature. The taking of testimony in behalf of contestant began February 23, 1923, and continued until November 30, 1923.

Taking of testimony by contestee began on December 20, 1923, and was concluded on March 1, 1924. The case was reported by the Clerk of the House to the Speaker on June 3, 1924, and briefs were filed, the first on June, 30 and the last on August 28, 1924.

On March 1, 1923, the parties entered into stipulation as follows:

> It is stipulated by and between the parties hereto, through their respective attorneys and counsel, that the time limit as fixed by the rules of the House of Representatives and the statues of the United States governing contested elections shall be deemed as directory and not mandatory, and that either party may have more than the period of time allotted and fixed therein within which to present his respective case in this proceeding, and both sides waive specifically any right to object that they may have under the law with respect to the time so fixed.

In repudiation of this stipulation the committee hold:

> A stipulation by parties in the nature of an agreement can not waive the plain provision of the statutes.

Indicating proper procedure to have been followed where further time was required, the committee quote:

> If either party to a case of contested election should desire further time and Congress should not then be in session, he should give notice to the opposite party of a procedure to take testimony and preserve the same and ask that it be received, and upon good reason being shown, it doubtless would be allowed.

The committee add:

> It is to be noted that Congress was in session from December 3, 1922, to June 7, 1924, but parties did not ask the consent of Congress either to extend the time or to validate the stipulation even in the face of a special rule of the House that cases must be disposed of within six months after the opening of the Congress.

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[1] Second session Sixty-eighth Congress, House Report No. 1082.

The law providing for the taking of evidence has been held to be not binding upon the House. It has been correctly stated, "That the House possesses all the power of a court having jurisdiction to try to the question who was elected. It is not even limited to the power of a court of law merely, but under the Constitution clearly possesses the functions of a court of equity also."

The law, however, is binding upon the parties, as evidenced by the use of the mandatory word "shall". The House alone, upon proper application, may grant a further extension of the time for taking evidence for cause shown as a matter of equity but not of right, or to protect the rights of the people of a district.

In confirmation of this interpretation, the committee cites precedents in which the House has granted or refused extension of time on application, and differentiates between instances in which the merits of the case warranted or did not warrant such extension.

Agreement of contestee's attorney to the stipulation is not considered by the committee to mitigate contestant's laches. The report says:

While the contestee's attorney joined in the stipulation to waive the requirements of the law, indeed, himself dictated it and was afterwards guilty of a breach of legal ethics when he raised the point of lack of diligence, nevertheless, it is incumbent upon the contestant to prosecute his case speedily. The contestee holds the certificate of election. His title can only be overturned upon satisfactory evidence that he was not elected. His seat in this body can not be jeopardized by the faults of others. It has been held that the House has no right unnecessarily to make the title of a Representative to his seat depend upon the acts, omissions, diligence, or laches of others.

However, Mr. John L. Cable, of Ohio, a member of the committee concurring in the conclusions of the committee, files additional views on this point in which he adds:

Neither is contestee without fault. His counsel prepared and entered into a stipulation with contestant's attorney that the rules of Congress and the laws of the United States should not be binding and that—

"either party may have more than the period of time allotted and fixed therein within which to present his respective case in this proceeding, and both sides waive specifically any right to object that they may have under the law with respect to the time so fixed."

Contestee's counsel now raises the issue of delay. In his brief he claims:

"The contestant has thoughout deliberately ignored the limitations and abused the privileges imposed and granted by the act."

He also contends:

"The contest should be dismissed because the contestant, without consent of the House or its proper committee, did not take and state his proof within the time limited by act of Congress."

He seeks to profit by a violation of his own agreement; to win his client's cause by the disregard of the laws of Congress, of which he also is guilty; to benefit from a situation he aided and assisted in creating; to use the violation of the law as a weapon of offense and defense—as a shield and a sword.

This action on the part of contestee's attorney is neither ethical nor professional. It is particularly a subject of condemnation. Contestee should not have permitted such a claim to be presented in his brief.

A few days before the case came up for hearing counsel for contestant requested that subpoenas issue for the production of 82 ballots in dispute. The committee gave as its reasons for denying this request:

The record is bare of any evidence or proof to sustain the general allegations of intimidation, fraud, or of other misconduct alleged in the notice of contest.

Contestant's counsel by failing to stress at all these contentions in the argument conceded that such allegations could not be sustained.

The record fails to reveal any real ground for contest other than the hope that a recount of the ballot might overturn the narrow majority of 168 by which the election of the contestee had been certified by the secretary of state.

But there is nothing in the record at all persuasive that a recount would change the result. The ballots said to be in dispute involve merely considerations of the kind of lead pencil used by voters, hair lines seen on the face of the ballots, and alleged erasures. There is no question involved of fraud or of other serious irregularities.

In the further support of its refusal to subpoena ballots for recount the committee asserts that the House and its committees are not boards of recount and quotes with approval the following statement of counsel in the case of Amsorge *v.* Weller:

It has been said again and again by the House, by the courts, by every tribunal that has this duty of passing upon contested elections, that the returns which are made by the inspectors, regularly appointed by the laws of the State where the election is held, are presumed to be correct until they are impeached by proof of irregularity and fraud, and that the House will not erect itself, nor will it erect its committees as mere boards of recount. It is conceived that when the statutes of the State have set up these bipartisan boards and made due and proper provision for their selection, that it is, a matter of public policy, wise and right that their conclusions shall be accepted by the parties to the election, by the public, and by any board charged with the duty of passing on the result, until such time as such irregularities and frauds are proved as to raise a fair presumption that their duties were not honestly performed.

The principal issue, however, on which the committee decides the case, is the failure of contestant to complete and file testimony within the time required by law and contemplated by the rules of procedure approved by the rules of procedure approved by the election committees and by clause 58 of Rule X1 of the rules of the House. The committee say:

The controlling factors, however, in our minds in reaching the conclusion in this case, were the imperative necessity of safeguarding the printed rules unanimously approved by the three election committees, a special rule of the House recently adopted, the plain and explicit provisions of a law of Congress, and a long and unbroken line of House precedents.

The rules of the election committees were carefully prepared and unanimously adopted by the three election committees.

They were prepared specifically to expedite the determination of election case. The contestant's attorney admitted that he had not brought himself within these rules.

Citing clause 58 of Rule XI, the committee quote a statement in debate on the adoption of the clause by the chairman of the then Committee on Rules: [1]

Everyone is opposed to allowing contested election cases to run along until the last day of the session, as is often done, and we can see no good reason for doing so. * * * But with that rule enforced, we thought we could hurry them up and get better action from the election committees than we have had in the past.

Citing section 107 of the Revised Statutes, the committee quote statements in debate on the enactment of the law by the then chairman of the Committee on Elections: [2]

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[1] First session Sixty-eighth Congress, Record, p. 950.

[2] Second session Thirty-first Congress, Globe, p. 108.

I have had during this Congress considerable experience of the difficulty under which the House and the Committee on Elections labor in determining upon those cases of contested elections which are brought before it. I have determined during the last session of Congress that I would endeavor to promote such a bill as would remove most of the evils and enable the House to dispose of those cases without such great consumption of its time but without suffering the evils under which it has labored in past years.

If this bill is approved, the result will be that instead of several months' delay, as has been the case heretofore, the testimony will be in the hands of the printer the very first day of the session, and the decision of the House will be made before the 1st day of January in every session.

And by another member of the Elections Committee: [1]

This thing of contesting the right to a sitting Member on this floor has become the greatest of all humbugs in this age of humbugs. A — comes here and claim that he is entitled to the seat of the person in it under proper authority of the State. The consequences is that during a long nine-mouth session the Member retains his seat, but at the close of the session the House decides that he is not entitled to it and is turned out after having exercised the conventions of an office nine months to which he had not been entitled, and although the contestant and the sitting Member are paid full wages of Members of Congress.

As to failure of contestant to comply with express provisions of the statute and the rules of the committee and of the House, the committee conclude:

The record reveals the fact that the contestant had permitted the contest to drag along up to within a few months of the termination of the Congress to which he claimed election; that the recount, even if successful for the contestant, would still further reduce the value of it for him to the nominal distinction of having been declared elected, but of course he would get the substantial emoluments of salary and clerk hire for two years.

The precedents of the House have recently been very specific and direct in holding that parties guilty of laches would have no standing before the House unless sufficient cause was disclosed for delay.

These precedents are well fortified by a long line of decisions in election cases.

The committee therefore recommended the adoption of the following resolution:

Resolved, That the Committee on Elections No. 2 shall be, and is hereby, discharged from further consideration of the contested-election case of Henry Frank *v.* Fiorello H. LaGuardia from the twentieth congressional district of New York.

165. The Senate election case of Peddy v. Mayfield in the Sixty-eighth Congress.

A memorial, having been filed charging conspiracy and excessive expenditure of money in the election of a Senator, the Senate by resolution authorized an investigation.

Discrepancies in returns disclosed by a recount and reported by the committee as insufficient to change the result of the election were not further examined by the Senate.

Failure to comply with statutory requirements in the signing, numbering, and stamping of ballots was disregarded by the Senate.

The Senate recognizes the power of the party or the State to provide regulations governing party primaries.

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[1] Second session Thirty-first Congress, Globe, p. 109.

Discussion of litigation in State courts to place names of candidates on the ballot.

Excessive and unlawful amounts of money spent without the knowledge or consent of the candidate do not warrant the sustaining of a contest.

In the Sixty-eighth Congress[1] the Senate considered the case of George E. B. Peddy *v.* Earle B. Mayfield, of Texas.

The credentials of Mr. Mayfield as a Senator from the State of Texas were presented December 3, 1923, at the beginning of the first session of the Sixty-seventh Congress, and being in due form he took his seat in the Senate.

Subsequently:[2]

George E. B. Peddy (contestant) filed with the Senate February 22, 1923, a petition contesting the election of Earle B. Mayfield (contestee) as Senator from Texas in the general election of November 7, 1922, and a protest both against the election and the qualification of the contestee. A first and second supplemental petition were filed by the contestant and an answer was filed by the contestee.

The charges alleged by the contestant were:

1. That illegal votes were counted for Mr. Mayfield and that legal votes were not counted for contestant.
2. That undue advantage and illegal discrimination in favor of contestee was such as to invalidate his election.
3. That the primary elections, both the first primary election and the second, or run-off primary election were illegally controlled by secret influences, by fraud, by excessive use of money, and by lawlessness in the interests of contestee and against the rights of contestant.
4. That there was a general conspiracy between the Knights of the Ku-Klux Elan and the contestee of a character and result that invalidated the election of contestee.
5. That contestee was disqualified for membership in the Senate of the United States largely because of the alleged "illegal practices that were directly or indirectly connected with his election."
6. Contestant asked for a recount and recanvass of the votes cast at the general election and claimed in his first supplemental petition that he, contestant, was entitled to the office.

The memorial with accompanying papers was referred to the Committee on Privileges and Elections. After consideration the committee reported a resolution authorizing an investigation by the Committee on Privileges and Elections which was Weed to by the Senate on January 3, 1924.[3]

Under authority conferred by the resolution:

The ballots were gathered in the State of Texas through the office of the Sergeant at Arms and were transmitted in sealed pouches by the Post Office Department under lock and key, with every safeguard against possible tampering. The recount, conducted in the Senate Office Building, was begun on February 18, 1924, and was completed on April 8, 1924. The official return from the State of Texas as taken from the county clerks' records shows the following result:

Mayfield	266,307
Peddy	132,529
Total	398,836

The total number of votes which were brought to Washington were $67,513, of which 28,319 were no votes. The result of the recount of these ballots showed that—

[1] Second session Sixty-eighth Congress, Senate Report No. 973.

[2] First session Sixty-eighth Congress, Record, p. 317.

[3] Record, p. 488.

Mayfield received 221,596
Peddy received 117,599

The inspection of the ballots also disclosed—

many irregularities and discrepancies and clear violations of law in connection with the casting of the ballots, as, for example, the laws of Texas provide that the ballots shall be signed by the judge of election.

30,209 Mayfield ballots were not thus signed.
14,609 Peddy ballots were not thus signed.

The law provides that the ballots shall be numbered.

1,723 Mayfield ballots were not numbered.
1,021 Peddy ballots were not numbered.

The law provides that the ballots that are cast shall be stamped "voted."

187,387 Mayfield ballots were not thus marked.
92,192 Peddy ballots were not thus marked.

As to the effect upon the validity of the election of these discrepancies in the count and the failure to comply with the statutory requirement specified, the committee in its report submitted January 3, 1924,[1] hold:

These are illustrations of the irregularities, discrepancies, and violations of law, but no one of them, nor all of them together, in the judgment of your committee, either did or ought to change the result.

As to the power of a party or a State to provide regulations governing party primaries within the State, the committee conclude:

The contestant complained of the law and practice in Texas which prevented any member of a party from voting at a primary election who had not voted, if he voted at all, for the regular party ticket at the last preceding general election.

It was claimed by the contestant that except for this rule Mayfield would not have been nominated at the primary. Similar regulations are in force in other States, and your committee has no doubt as to the power of a party or of a State to make such regulations if they see fit so to do.

The committee further determine:

The contestant alleged that there was a general conspiracy between the Knights of the KuKlux Klan and the contestee in order to bring about the election of the contestee and that pursuant to this conspiracy unlawful sums of money were spent in favor of contestee and that the Knights of the Ku-Klux Klan, a corporation, were prohibited by law from contributing to or interfering in their corporate capacity with elections, and also that intimidation was resorted to in the interest of the contestee.

The evidence does not, in the opinion of your committee, show that excessive and unlawful amounts of money were spent, and certainly not with the knowledge or consent of Senator Mayfield, nor do they find from the evidence that there was any such lawlessness or conspiracy in connection with the Ku-Klux Klan or otherwise as would in their judgment warrant the sustaining of the contest.

In conclusion, the committee say:

Undoubtedly there were, particularly in the primary election, and in the general election as well, acts of omission and commission in violation of express statutes, and some of them doubtless

[1] Record, p. 489.

were intended to unlawfully produce a desired result in the election, but the evidence from the beginning to the end of it does not show either a knowledge or a consent of Senator Mayfield in these matters, nor are they of a character or extent which in the judgment of your committee warrant either the sustaining of the contest or the protest against the seating of Senator Mayfield.

The report also recounts at length the course of litigation in the State courts over the placing of names of candidates on the ballot.

The committee therefore:

unanimously recommend that the contest in this case be dismissed and the protests against the seating of Senator Mayfield be overruled.

The Senate, without debate or division, agreed [1] to the report.

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[1] Second session Sixty-eighth Congress, Record, p. 2929.