

SENATOR FROM PENNSYLVANIA

REPORT

OF THE

COMMITTEE ON PRIVILEGES AND ELECTIONS

PURSUANT TO S. RES. 68 AND 310 (70TH CONGRESS)

RESOLUTIONS AUTHORIZING THE COMMITTEE ON PRIVILEGES AND
ELECTIONS TO HEAR AND DETERMINE THE CONTEST BETWEEN
WILLIAM S. VARE AND WILLIAM B. WILSON AS TO MEM-
BERSHIP IN THE UNITED STATES SENATE AS A
SENATOR FROM PENNSYLVANIA

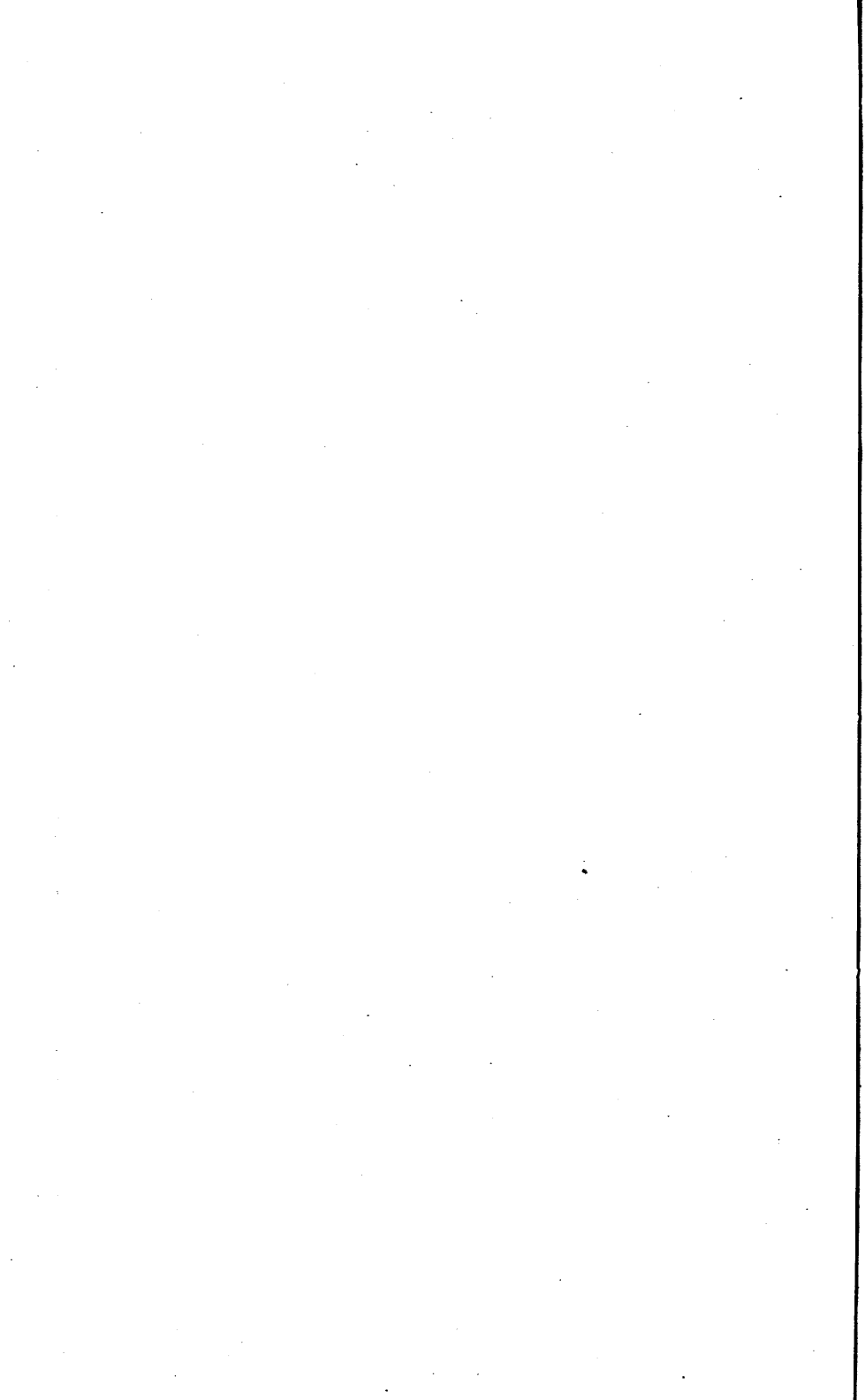
TOGETHER WITH A

SUPPLEMENTAL REPORT



DECEMBER 4 (calendar day, DECEMBER 5), 1929.—Ordered to be printed

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DECEMBER 4 (calendar day, DECEMBER 5), 1929.

Mr. SHORTRIDGE, from the Committee on Privileges and Elections, submitted the following

REPORT

[Pursuant to S. Res. 68 and 310, 70th Cong.]

Your Committee on Privileges and Elections, to which was referred Senate Resolutions 68 and 310 (Seventieth Congress), the contest of William B. Wilson against William S. Vare, for a seat in the United States Senate from the State of Pennsylvania, with directions to report its findings and conclusions based upon the evidence adduced and the election records of the election held in the State of Pennsylvania for United States Senator on the 2d day of November, 1926, has had the entire matter under consideration and a majority of said committee respectfully reports as follows:

William B. Wilson, a citizen and resident of the State of Pennsylvania, filed his formal complaint or statement of contest with the United States Senate on the 4th day of March, 1927, and thereupon and on that day the Senate referred the contest to the Senate Committee on Privileges and Elections.

Thereafter, and on or about the 16th day of January, 1928, the said Wilson filed with the Senate Committee on Privileges and Elections an amended complaint or statement of contest which superseded the one previously filed.

Thereafter, the contestee Vare, on the 21st day of January, 1928, filed his demurrer and answer to the amended statement of Wilson.

Subsequently and prior to the 26th day of January, 1928, the Committee on Privileges and Elections sustained the contestee's demurrer to the amended statement of contest of Wilson and on the 26th day of January, 1928, contestant Wilson filed an amendment to his amended complaint and statement.

Thereafter, the contestee filed certain pleadings, charging irregularities and frauds in some 30 counties other than the 6 counties challenged by the contestant Wilson and squarely raised an issue on the allegations contained in Wilson's amended statement, as amended, which related exclusively to 6 counties, to wit: Allegheny, Delaware, Lackawanna, Luzerne, Philadelphia, and Schuylkill.

Your committee determined as a matter of procedure, for the time being, to investigate only the charges made by the contestant concerning the election in the six counties last named.

Consequently, this report is limited to an investigation of the election in the six counties challenged by Wilson, while the counties challenged by Vare still remain uninvestigated.

This amended statement, as amended, clearly bottomed the entire contest as did counsel for contestant at the argument on a wide and far-reaching conspiracy to control, corruptly, the results and falsify the returns of the election for United States Senator at the November election, 1926, throughout the six counties challenged, to the end that the ballots in these six counties might all be discredited and thrown out of consideration in determining the election.

In his printed brief filed in connection with the oral argument the contestant stated in connection with the vote of Philadelphia, as follows: "The said contestant herewith protests the entire vote cast in the city of Philadelphia, comprising 1,500 election districts, Commonwealth of Pennsylvania, 2d day of November, 1926, and asks that the same be rejected and thrown out for the following reasons," and then proceeded to assign 39 separately numbered specifications of fraud.

Also, substantially the same statement was made in the brief (p. 10) with reference to the 689 election districts in the city of Pittsburgh.

In view of the contestant's pleadings and the position assumed by the counsel at the argument, in his brief and specifications of fraud, it is clear that the contestant is burdened with the task of proving, not only the conspiracy as laid and every element of it, but also that the conspiracy was so far-reaching and wide in its scope and effect that it contaminated every ballot box and the ballots therein and the election records in every one of the six counties challenged, or enough of such counties to change the result.

In other words, it must be found, not beyond a reasonable doubt, perhaps, but it must be the conviction of reasonable men, at least, that the proof sustained the charges of conspiracy affecting the election machinery and ballots of these six counties or enough of them to overcome the majority for Vare appearing on the face of the official election returns, whose majority in the State was 173,507.

It is to be borne in mind that the contestant does not, on the face of the record or pleadings, charge the registration commissioners of the city of Philadelphia or the city of Pittsburgh with any connection whatever with the alleged conspiracy or frauds.

All the commissioners on the registration boards, in both cities named, were appointed by Governor Pinchot and they served as such commissioners throughout the entire period embraced by this controversy.

After the issues had been raised on the pleadings, all of the ballot boxes, election records, and paraphernalia, which had been gathered by the special committee, of which Senator Reed of Missouri was chairman, and brought to Washington and there retained in the custody of the special committee, were turned over by the special committee to your committee for investigation under the authority of Senate Resolution 68 of the Seventieth Congress. As soon as arrangements could be made, your committee proceeded with its examination of these ballot boxes, records, and paraphernalia, in the

presence of authorized representatives of the contestant and contestee, under the direction of representatives selected by your committee.

As the ballot boxes were opened and the ballots checked and re-counted, each party to this controversy was permitted to make a record of protests against any record, any ballot, or any ballot box which he desired to challenge. Consequently, a great many ballots were segregated under protest and laid aside.

Thereafter, the representatives of the contesting parties, under the direction of and in the presence of representatives of your committee, reexamined the ballots so protested and agreed between themselves upon the good ballots contained among the ballots so protested, with the final result that in the city of Philadelphia Mr. Wilson finally protested 3,000 ballots, these protests being based upon some 42 different grounds.

Mr. Vare, after this agreement, protested ballots in the city of Philadelphia upon certain specified grounds of less number than those assigned by the contestant.

Representatives chosen by the respective contesting parties were always permitted to be present during all the proceedings of your committee in relation to this entire investigation and recount, save only when this committee came to consider the charge that votes were cast by persons who were not, in fact, registered. This examination of records, only, which were in evidence was conducted by your committee in executive session.

At the final argument before the committee, the election in Delaware, Lackawanna, Luzerne, and Schuylkill Counties was not discussed or more than incidentally referred to.

As a matter of fact, the examination of the ballot boxes, ballots, and other election paraphernalia in these last-named counties did not disclose anything of sufficient importance to be further considered.

After the committee had assumed that the taking of testimony was closed and about the month of December, 1928, the parties, contestant and contestee, were requested to provide the committee with a condensed statement or abstract of all the oral testimony which had preceded.

An abstract of such testimony was prepared by the contestant and submitted and a supplement thereto was submitted by the contestee, and while these abstracts are not binding upon either party they may be considered as a fair statement of the parties, and in fact have been so considered by both parties and the committee, although in the event of controversy about what the evidence actually is the official testimony itself is open to examination at the instance of any party or the committee.

After the condensed form or abstract of evidence was filed with the committee the contestant was requested to specify in detail the precise fraudulent acts which he claimed tended, in any way, to support his contest.

Thereafter, and on the 21st day of January, 1929, the contestant did file rather voluminous, so-called, specifications of fraud relating exclusively to the contest of Allegheny and Philadelphia Counties, and thereby inferentially, at least, abandoned all charges of conspiracy and fraud concerning the election in the counties of Delaware, Lackawanna, Luzerne, and Schuylkill.

Each of these specifications of fraud was general in its terms, broad in scope, and roving in character, so that your committee was compelled to recheck and review its preceding examination of all election records except the ballots themselves, which it did in executive session, and prepared two reports upon the charges made—one a voluminous general report and the other a condensed report of the general report. A copy of this condensed report was placed in the hands of each party to the contest a considerable time prior to the final oral argument of the case.

Oral arguments were had on the 23d, 24th, 25th, 28th, and 29th days of May, 1929.

After the oral arguments the attention of the committee was called to the fact that there had been proceedings in court in Allegheny County in relation to certain indictments found in connection with the election of November 2, 1926, and so the committee determined that these matters should be investigated and further testimony was taken at Pittsburgh relating to such indictments and the proceedings thereunder and some other matters in the month of July, 1929. This proceeding closed the taking of testimony.

Altogether, 3,775 typewritten pages of oral testimony have been taken and voluminous exhibits have been received in evidence constituting a part of the record.

Your committee has examined all of the election records and all of the ballot boxes in all of the said six counties, except the county of Allegheny, and in that county all of the boxes challenged by the contestant.

Three thousand one hundred and seventy-one ballot boxes have been examined, together with all the records and papers pertaining to the election.

Every election division in Pittsburgh and Philadelphia, at the time of election, was furnished with two books made up by the registration commission, which books are identical in form and substance except that the registering voter signs his name in one of the books only. These two books are respectively called the "ballot check list" and the "voter's check list" and these books are present at the scene of election in each voting district for use in checking both ballots and voters.

Two other record books were kept, at the election, in each of which is written the name of every voter who receives and deposits his ballot. Each of these two books is called a "voter's list." One of them is returned to the prothonotary in a sealed bag furnished for that purpose and the other is placed within the ballot box. These two voter's lists, supposed to be made by different persons, should, of course, be identical and should show on their face the names of the voters in the order in which they deposited their ballots.

In order to pass intelligently upon the charges made by the contestant, the committee was compelled to examine in detail and recheck afterwards all of these voting records, name by name, which it did.

Most of the subjects to which the contestant's specifications of fraud are directed are mere irregularities apparent or seeming in the conduct of the election by the election officials or in matters pertaining in some way to the election.

The official acts of election officers are always presumed to be honest and correct unless the contrary is shown.

Any act by election officers which designedly and wrongfully deprives an elector of his vote or by means of which an illegal vote has been knowingly placed in the ballot box is, of course, fraudulent, and can not be said to be an irregularity if it is a positive act knowingly performed which injures somebody.

On the other hand, it is quite uniformly held that where election officers fail to observe directory provisions of the law in relation to the mode and manner of the conduct and proceedings of the election, failures in this regard are held to be mere irregularities because the disregard of statutory provisions relating to elections is always held to be merely directory as distinguished from mandatory, unless the statute expressly declares that the performance of any particular act omitted to be performed is essential to the validity of the election or that the omission to perform the act renders the election void.

With the exception of certain voting districts or divisions in Allegheny County and Philadelphia County, the things specified by the contestant and characterized as frauds are not frauds at all, but mere irregularities which, without fraud, do not affect the official returns.

There are some voting districts, or divisions, just referred to in both of the counties last named which have been challenged by the contestant on the ground of actual fraud and which will be hereinafter specified and treated separately.

In these particular districts or divisions there is evidence in the record tending to show that actual fraud did pervade the whole election in such districts or divisions.

With this foreword, your committee will proceed to analyze and report seriatim on the expressed specifications put into the record by the contestant and in the order in which such specifications of fraud are assigned by the contestant in his specifications of fraud.

PHILADELPHIA

Your committee now directs attention to the contestant's specifications relative to the city of Philadelphia and the results derived by this committee from all the records and evidence pertaining to each such specification:

Specification No. 1

Under this head, it is charged that the price of \$48 per thousand paid for printing official ballots and \$45 per thousand for printing specimen ballots was not only excessive, but fraudulent. No evidence whatever was adduced showing or tending to show any actual fraud or that any of the money paid for such printing was ever used by anybody in connection with the election for any purpose whatever.

Testimony shows that the prices specified were, in fact, paid and that there were great difficulties in printing the ballots because the ballots prepared and printed were different in different congressional, legislative, judicial, and voting districts which required the changing of type to fit the varying conditions.

No evidence was introduced with respect to this subject tending in any way to support any charge of fraud or conspiracy.

Specifications No. 2 and No. 3

Specification No. 2 charges that an illegal and excessive number of ballots, commonly called "extra" ballots, were printed.

Specification No. 3 charges that a large number of additional or "extra" official ballots were illegally distributed to the various polling places.

These "extra" ballots, seemingly not limited as to number, were authorized by statutory provision; but it would appear that the number so authorized for an election of the character of that had on November 2, 1926, is not specific, in that the law refers to the county as a whole, and that there was in this particular election a different ballot for each city ward; nor is the law with reference to the regular official ballots specific as to the number to be printed; but does require that ballots not less than a specific number shall be printed.

There is evidence to show the number of regular ballots ordered for each particular district and there is also evidence to the effect that 100 "extra" ballots were ordered for each district.

In each of 17 districts there were 50 ballots delivered to the election officers over and above the number ordered, the stubs of which ballots were numbered consecutively. There was one district in which 100 ballots more than were ordered were delivered, the stubs being also numbered consecutively. There were two districts in each of which 50 ballots in excess of those ordered were delivered, the stubs being numbered consecutively up to and including the number ordered and then skipping 100 numbers before the numbering began on the stubs of the last 50 ballots. There was one district in which the number of ballots delivered was exactly the number ordered; but the numbering, instead of being in consecutive order, began with 1, running to 500, then jumped to 651, running to 1,700.

Evidence was submitted showing that none of the "extra" official ballots delivered to the commission were opened or delivered to the polling places. Evidence was also introduced to show that the printers made up the packages of regular official ballots, sealed them ready for delivery to the polling places, and also made one package of all "extra" ballots to be delivered to the county commissioners.

The evidence submitted shows that the packages so tied and sealed by the printers reached the election officers at the polling places in good condition and the seals unbroken. There is no evidence of fraud or conspiracy in connection with the printing or distribution of ballots in Philadelphia, but it does appear that the printers made mistakes and sent a greater number of regular official ballots to some of the polling places than ordered, or had, through error, put within the packages to be delivered to election officials some of the ballots which should have gone to the county commissioners as "extra" ballots.

Specification No. 4

It is charged that in many cases the official ballots were distributed to the polling places in the various election districts in an illegal manner and to persons not authorized to receive them.

There is no evidence whatever in the record tending to show any illegality in the methods resorted to in the delivery of these ballots to the various polling places or that legal official ballots were not properly received at the polling places in their original sealed packages by the election officers themselves.

Specification No. 5

Specification No. 5 charges that in a large number of election districts the election officers were in possession of ballots in excess of ballots authorized by law. In this connection the law does not limit the number of ballots, provided there are as many as 50 ballots for each 50 persons assessed or fractional part of that number within the district.

Specification No. 6

It is here charged that the election officials in many of the election districts failed to account for the entire number of ballots furnished them under the law.

The records disclose that in 83 districts in Philadelphia all of the ballots received were not properly returned.

In 18 of these districts, only one ballot each was unaccounted for, but there is no evidence in the record except in ward 4, district 16, tending to show an illegal use of the ballots unaccounted for and not returned.

In one district (twenty-seventh ward, third district) during the hearing before the committee at Philadelphia one large package of unused ballots was returned from this district by the election judge from that district, who was called to the witness stand and stated that he was unaware that the unused ballots were required to be returned after the election and that he had kept them at his home from the time of the election until the time when they were brought into the hearing and delivered to the committee.

Specifications No. 7 and No. 8

It is charged that in at least 77 election districts, more than one ballot was issued to individual voters contrary to law and that what is commonly known and referred to in the record as "chain voting" was practiced.

If these charges were true, such things would strongly indicate fraud, both upon the part of some of the voters and some of the election officials.

It could not be said that such practice was a mere irregularity only. It would constitute actual fraud.

The record, however, submitted to the committee is not sufficient to sustain either one of these charges, either with respect to any voting district or any ballot cast, nor do the ballots themselves in any way disclose any evidence to support the charges made in this regard.

Specification No. 9

It is charged that in not more than 181 election districts does the computation of the number of votes filed by the respective election

boards tally with the actual count made by your committee, and that in each of the 48 wards of Philadelphia the contestant made substantial gains upon the recount.

Putting aside the protested ballots and the fact that some of the ballots which were marked "spoiled" by the election officers and found with the unused ballots and stubs, the recount made of the ballots by your committee shows that there were 178 voting districts in which the count was unchanged for either party; that there were 225 other districts in which the count for Wilson was unchanged, but in which Vare either lost or gained; that there were 133 other districts in which the count for Vare was unchanged, but in which Wilson either gained or lost; 87 other districts in which a gain was shown for both parties to the contest, and 74 districts in which a loss was shown for both parties; 732 districts in which Wilson gained and Vare lost, and 70 districts in which Vare gained and Wilson lost; the net gain for Wilson being 5,126 and the net loss for Vare being 5,724, or a gain of $1\frac{3}{10}$ per cent of the entire vote for Wilson and a loss of $1\frac{5}{10}$ per cent of the entire vote for Vare.

No evidence was submitted tending to show a willful miscount in any voting district except possibly in that group of divisions hereinbefore referred to concerning which evidence of fraud generally was adduced.

While it might be argued that a loss of $1\frac{5}{10}$ per cent by Vare and a gain of $1\frac{3}{10}$ per cent by Wilson in Philadelphia would be evidence which should be considered in the determination of the presence of fraud in the election and possibly in support of the charge of general conspiracy affecting the whole city of Philadelphia, yet, in view of all the facts and the results deducible from the face of the records and the fact that in many districts the count remained unchanged; many districts in which both parties lost; many districts in which both parties gained; a considerable number of districts in which Wilson lost and Vare gained; and the other facts hereinbefore in this paragraph stated, it can not be said that this record discloses that there was a general conspiracy in Philadelphia for the accomplishment of any of the purposes charged because the conditions actually found and the computations of the vote by the committee in all of the districts of Philadelphia clearly disclose that there was no concerted purpose looking to the accomplishment of any specific or definite object.

In other words, the evidence discloses no consistency of purpose whatever to contaminate the election generally in Philadelphia or that any of the methods employed or the acts or the computations made out of which issued the official results of the election in Philadelphia generally were vicious or fraudulent in purpose or intent, exclusive of certain districts hereinafter specially referred to.

Specification No. 10

It is charged that in a large number of election districts names were placed on the registration lists of persons who did not live in the district in which their names appeared on the registration books.

As previously stated, the registration was entirely, completely, and exclusively in the jurisdiction of the registration commission, which is not charged with being a party to any conspiracy, nor are its

members. In fact, the members of these commissions were aggressively antagonistic to the Republican organization in Philadelphia and Vare.

The registration commission was responsible for the registration. It had the power and authority and was impressed with the duty to see that the registration lists were pure and undefiled. It selected and appointed the four registrars in each voting district, and it had the power of making its own selection of its registrars; and anything which may be irregular or fraudulent in connection with the registration commission can hardly be charged against Vare or the Republican organization in Philadelphia.

There is, however, in the record evidence which will be hereinafter referred to tending to show in 19 districts of Philadelphia that there were names on the list of voters at the election under consideration which can not be identified with the names officially registered, but this fact does not tend to prove that there was anything wrong or fraudulent in the registration itself.

Specification No. 11

It is charged that in at least 1,111 election districts 9,574 persons were registered by their mark and without affidavits as required by law.

A careful examination of the records shows that there were approximately 9,600 persons registered by mark or where a cross was placed somewhere within the column in which the name was written and for which no evidence of inability to write has been discovered, but the record does not definitely disclose whether or not the cross was made by the person so registering or by one of the registrars to indicate the line upon which the registrant should sign his name.

Approximately 1,200 persons so registering by mark did not vote. In addition to the 9,600 persons referred to as being registered by mark, and for whom no affidavits were found, there were 2,017 persons registered by mark for whom affidavits were found.

The required affidavits referred to are not required to be filed with the election papers, but were filed in and kept in the responsible custody of the registration commission, and so the failure to procure these affidavits can not be charged against the election officials or any official connected in any way with the election.

Furthermore, the statute requiring affidavits in connection with the registration of persons who could not write expressly provides that the affidavit is not required if the person seeking registration is afflicted with some physical infirmity which renders him unable to write. How many of these 9,600 persons who registered and for whom no affidavit can be found were afflicted with "some apparent physical infirmity" does not appear and there is no method of determining the number.

Furthermore, the members of the registration commission are entitled to the presumption in favor of the legality of all their acts and they were burdened by the law with the responsibility of seeing to it that the registrars appointed by them, who conducted the registration in the different voting districts, complied in every respect with the law and the commission was required by law to see to it that the registrars returned to the commission all affidavits required

by law to be made in connection with the registration in the respective voting districts.

In view of the fact that the record does not disclose that affidavits were not made as required by law and filed with the registration commission, it can not be said that any of the necessary affidavits were not made and filed with the commission and the failure of the commission to find and surrender them does not, in any way, affect the validity of the registration because the production of affidavits in the cases required does not condition as a matter of statute the validity of the registration itself.

It may be said, however, that the affidavits of inability to write which were found were not part or parcel of the election record, but were found in an unopened bundle in the basement of the Senate Office Building, or at any rate some of them were, but how they reached that place of deposit no one seems to know. This bundle of affidavits, however, related to about 20 different wards and were from various sections of the city of Philadelphia.

The absence of affidavits possibly can be explained by presuming that they have been mislaid or lost in the office of the registration commission. At any rate the general presumption that the members of the registration commission did, in fact, perform their duties must be sustained unless overcome by proof.

It must be borne in mind in connection with this discussion that the total registration in Philadelphia for the election under consideration was approximately 450,000 persons.

Specification No. 12

It is charged that in at least 761 election districts, votes were cast by persons not registered in the district in which they voted.

A careful examination of the record discloses that there were 19 districts, to wit:

- Third ward, eleventh district.
- Fifth ward, eighth district.
- Ninth ward, eighth district.
- Seventeenth ward, thirteenth district.
- Twenty-first ward, fifteenth district.
- Twenty-fifth ward, twelfth district.
- Twenty-fifth ward, twenty-seventh district.
- Twenty-seventh ward, ninth district.
- Twenty-eighth ward, thirty-second district.
- Twenty-ninth ward, first district.
- Thirty-third ward, first district.
- Thirty-ninth ward, twelfth district.
- Thirty-ninth ward, twenty-eighth district.
- Thirty-ninth ward, thirty-second district.
- Thirty-ninth ward, thirty-sixth district.
- Forty-fourth ward, fourth district.
- Forty-fourth ward, thirty-fourth district.
- Forty-fifth ward, fifth district.
- Forty-seventh ward, second district.

in which this condition may have existed, but it is doubtful whether the evidence is sufficient to overcome the presumption to which the election officers are entitled.

The number of ballots, however, which may have been cast by non-registered persons is only 33.

Specification No. 13

It is charged that repeaters voted in at least 316 election districts.

The contestant evidently founded this charge exclusively upon the voter's lists. He asserts that the same name appears more than once on the same list of voters and then bases on that the conclusion that the same man in each instance voted more than once or that some other individual, after or before the legal voter had actually voted, cast a ballot in the name of such other voter, but there is not a particle of evidence indicating any such practice outside of the voter's list itself. But errors in the voter's list or omissions or even a complete failure to keep any voter's list can not invalidate an election or a single ballot in the ballot box in any division unless there is evidence of fraud in connection with the ballots themselves or evidence of intimidation or violence or an interference with the official machinery. However, in 28 districts the lists indicate that this charge might be true to the extent of 94 votes only. Therefore, there being no evidence of actual fraud, nothing but duplication of names or the appearance of names of voters upon the voting lists, of persons not registered, the integrity of the election in such a district must be upheld.

Specifications Nos. 14 and 15

It is charged that votes were cast in excess of the names entered on the voter's lists in 341 election districts and that in 527 election districts, more votes were counted than names checked on the registration books.

The record discloses that in 26 districts, the ballots, exclusive of ballots which could be identified as spoiled and void ballots, exceeded the names on the voter's list and that in 90 districts, exclusive of such spoiled and void ballots, ballots exceeded the names checked on the registration lists.

The record further discloses, however, that while the ballots found appear to be in excess of the number of names on the voter's lists or of the names checked on the registration books, as stated, there are only nine districts in Philadelphia in which the ballots may exceed in number both the names on the lists of voters and names checked as voting upon the check lists.

In view of the fact that marked ballots found with the unused ballots and stubs, having the words "void" or "spoiled" written on them, were taken out and counted in every instance by the contesting parties themselves under their agreement without a record being made to that effect, it is impossible to say from the record whether there were nine such districts, or any.

The number of ballots, however, involved is only 84.

Specification No. 16

It is charged that in 395 districts more ballots were cast than there were voters listed. The record shows, after eliminating all void and spoiled ballots which could be identified as such, that there were only two districts in which this condition existed—the eighth and thirty-fourth districts of the thirty-ninth ward. The number of ballots involved under this specification is 8.

Specification No. 17

The charges in this specification are substantially the same as those in specification 15.

Specification No. 18

It is charged that alphabetical order of voting appears in the voter's list in at least 38 election districts.

An examination of the two lists of voters discloses that in one division (thirty-sixth ward, eleventh district) the names of those voting were listed under letters corresponding with the letters beginning with the surname of the voter, but they were not written in the same order as found in the registration books.

In this particular division the voter's lists were made intentionally in alphabetical order, but there is no evidence that this was fraudulently done or done with the purpose of committing any fraud or affecting the honesty of the election in any particular.

In the other districts referred to there may be found four, five, or more names written alphabetically but not following the order in which they were found in the registration books.

There was no evidence to show whether or not this listing, so made, was made in actual voting order of the persons voting or whether it was done in an effort to correct prior mistakes or omissions on the part of those writing the lists.

In four districts, to wit: Second ward, eighth district; second ward, nineteenth district; fourth ward, seventeenth district; and thirty-third ward, thirty-fifth district, the names of the election officers or some of them were included in the so-called alphabetical listing in the voter's list. These voting lists, however, are not any better evidence of the names of the persons who actually voted than the ballot check list and the voter's check list, which are the registration books prepared by the registration commission, one of which is signed by the registering voter.

But in any event, unless there is some fraud shown, the ballots themselves are the best evidence of the ballot cast, and in the absence of fraud, mistakes and irregularities can not be considered as against the validity of the ballot.

Specification No. 19

It is charged that many thousands of names were erased and altered on the voter's lists.

An examination of the voter's lists discloses that erasures were made; that is, a name erased and the spelling changed or another substituted, or the name entirely omitted. In many instances, however, where an erasure is found in one of the voter's lists no corresponding erasure or change is found in the other voter's list.

No evidence was offered to show that these erasures were not, in fact, made merely for the purpose of correcting errors in spelling or in some other particular.

Specification No. 20

It is charged that in many election districts, ballots containing identical tears show that they were torn from the stub at the same time.

It is contended that the tearing of several ballots from their stubs at the same time is contrary to the provisions of law.

Two hundred and seventeen ballots from 20 different voting districts were protested by the contestant on this ground, and the records disclose a similarity of tear in each particular district but differing in different districts. This ground of protest was made in conjunction with other grounds of protest in many instances.

For instance, ballots were protested for identical tears alone; for identical tearing and similar marking; for insufficient crease and identical tear; for identical tear and group folding; for identical tear in conjunction with certain other alleged physical characteristics.

The law is, that so soon as the voter is admitted to vote, the election officer in charge of the ballots "shall detach a ballot from the stub and give it to the said voter," and that not more than one ballot shall be given to a single voter, except under the provisions of another section of the statute. (Act of 1893, sec. 21, P. L. 429.)

It is to be noted that there is no prohibition against detaching more than one ballot from the stub at the same time and by the same effort. The prohibition goes against the giving of more than one ballot to a particular voter so, as a matter of fact, identical tears in and of themselves even if several ballots were in fact detached from the stub at the same time, is not either the violation of any law nor is it evidence of any fraudulent transaction. At the best, it can be said only to be an irregularity.

Specification No. 21

It is charged that in at least eight election districts no general election ballots were found in the ballot boxes.

Examination of the ballot boxes received from the special committee disclosed that 8 ballot boxes from that number of districts did not contain any ballots, but the ballots for each respective district were found in the envelope provided for the purpose of receiving the unused ballots and official stubs returnable to the prothonotary's office and the ballots so found in each district, exclusive of void ballots checked within 6 of the number shown on the return sheets, in fact only 6 less in all 8 districts than was shown by the return sheets.

Specification No. 22

It is charged that the reports of the 48 ward treasurers of the Republican city committee of Philadelphia, showing the amounts of money received and expended, do not conform with the requirements of law, and that these reports in many instances show a disbursement of money for purposes not only not authorized by law but in violation thereof. All of these 48 reports were submitted to the committee for examination.

There is no evidence other than the reports themselves upon this subject.

In so far as the reports themselves indicate anything other than the receipt and payment of money, they do not disclose any violation of the statute, and they sufficiently comply with the statutes to have received the apparent sanction of the authorities of the city of Philadelphia.

Specification No. 23

It is charged that in a number of election districts an illegal and excessive number of watchers were employed by the Republican organization.

The evidence discloses that in some districts the reports of the ward treasurers did show more watchers than the law contemplates, but the oral testimony taken showed that the word "watcher" was used to include both watchers and messengers, and the law in no way limits the number of messengers who may be employed.

The record does not disclose that there was any actual fraud in this behalf of that any wrongful influence was exerted by watchers or messengers upon the conduct of the election. These watchers and messengers have nothing whatever to do with the conduct of the election itself, and none of them were election officials.

Specification No. 24

It is charged that in a number of election districts a minority inspector of elections was not, in fact, affiliated with the minority party as required by law.

There is no such requirement by law.

Article 8, section 14, constitution of Pennsylvania, provides:

District election boards shall consist of a judge and two inspectors, who shall be chosen biennially by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk.

There is no provision of law requiring minority party representatives on the election board.

No voter can vote for more than one inspector under the law, but the law provides that two inspectors shall be elected.

There is no requirement that there shall be any party representatives whatever.

The voters themselves determine by their own votes the persons who shall be inspectors.

From the mere fact, if it is a fact, that the minority was not represented by an inspector is not evidence of any fraud or any conspiracy to commit fraud.

Specification No. 25

It is charged that in at least 138 election districts, election officers were also registrars in violation of the law.

Under the law of Pennsylvania a registrar—an officer appointed by the registration commission—may not act at an election as an election officer.

In 1926, there were 6,000 registrars in Philadelphia; 4 in each voting district.

The election officers for the election of 1926 in each district, other than the clerks, were elected at the election held in 1925. All the registrars are appointees of the registration commission.

The registration commission had complete and absolute control of registrars and the absolute right to appoint each one of them and the right to refuse to appoint anyone not lawfully entitled to be

appointed, and further, the right and power to remove any registrar ineligible to hold the office.

If there was any violation of the law with respect to this matter, it was a violation by the registration commission, wittingly or unwittingly, but the evidence does not disclose, in fact, that at the time, that is, upon the day of the election in 1926, any election officer in Philadelphia was on that day actually a registrar.

The evidence shows that in 90 voting districts in Philadelphia, there were 107 persons who had, previous to the election, acted as registrars under the authority of the registration commission.

There is no declaration of statute that any election at which the registrar acted as an election officer is void or that the vote in such an election district shall be disregarded, so that the whole matter resolves itself into a mere irregularity, and further, the evidence does not disclose that there was any fraud committed or attempted to be committed by any person acting in the dual capacity, if any so acted, of registrar and election officer.

Specifications Nos. 26, 27, and 28

In these specifications it is charged that in 476 election districts the judges of election were not sworn as required by law; that in 471 districts one or more of the inspectors of election were not sworn as required by law and that in at least 465 election districts, one or more clerks of election were not sworn as required by law.

The examination of the election papers with reference to the oaths shows that judge's oath was not attested in 457 districts; that as to the inspectors, the charge is true as to 448 districts, and as to clerks, it is true in 445 districts.

With the following exceptions, however, the oaths by the judge, inspectors, and clerks were properly signed in every district within the city of Philadelphia. In 25 districts no oaths or blanks were found with the election papers; in one of the 25 districts, however, there was a note stating that no blanks had been delivered, but that the election officers were willing to make the oath. There were 32 districts in which one or more of the officers signed the oaths. There was one district where no judge's or inspectors' oaths were found; one district where the oaths were found, but not signed; one where the oaths were signed by the inspectors only and attested; one where only the judge's oath was signed and attested, and one in which no oaths of the clerks were found, and one wherein the judge's signature was placed on the oath with a rubber stamp, which would sum up that all oaths for all the districts, except 63, had been signed by all election officials. For 25 of these districts, the oaths were not found in making the examination of the papers.

The rights of the voters, in the absence of fraud, can not be destroyed by irregularities of this sort. (221 Pa. 521, 286 Pa. 257, 287 Pa. 135.)

The principal default in this regard lies in the fact of a neglect to have the oath of the election officer attested. Most of the oaths under consideration were signed, but in many cases not attested. The lack of attestation does not prove that the officer signing the oath was not, in fact, sworn. Without the signing of the oath or

the administration of the oath, the persons acting as election officials were de facto officers at least and their acts as such are valid unless in some way the election is contaminated by fraud clearly proven.

Specification No. 29

In this it is charged that the same type of frauds, upon which convictions were had, were found duplicated in at least 141 districts.

Convictions were had in connection with frauds in the election of November 2, 1926, in three districts, namely, the thirty-sixth ward, second district; fourth ward, sixteenth district; and thirty-ninth ward, thirty-fourth district.

In the first-named district three persons, namely, the judge and two inspectors, were convicted of making false returns of the votes at a general election.

In the second-named district two persons, the judge and one of the inspectors, were convicted for depositing fraudulent ballots in the box, for writing false names in the list of voters for the purpose of concealing the deposit of fraudulent ballots, and for fraudulently certifying on their election returns as correct a return of ballots in the box which they knew to have been fraudulently deposited therein.

In the third-named district the judge and two inspectors were convicted of receiving votes of persons not entitled to vote and of certifying as correct a return of ballots which they knew to have been fraudulently deposited, and of willful fraud in writing false names in the list of voters for the purpose of concealing the deposit of fraudulent ballots.

There were two convictions for unlawful registration. In the fourth ward, sixteenth district, the registrars were convicted of unlawful registration of voters and of inserting names in the voting check list of persons who had lived in the district but had moved therefrom for periods from a month to a year; unnaturalized persons; and, in one case, of a man who was shown by hospital records to have been an inmate of the hospital and bedridden on the day of registration.

In the twenty-first ward, twenty-seventh district, a man by the name of William Leddy was indicted and found guilty of inserting the name of an elector in the voting check list.

In several other districts, namely, the forty-fifth ward, twenty-second district; eighteenth ward, third district; and forty-fourth ward, fourteenth district; the election officers were indicted but were not convicted when their cases came to trial, the juries bringing in a verdict of not guilty.

It would appear, therefore, that the frauds charged in this specification were of three different characters—first, placing names on the registration book which had no legal right to be so written; second, receiving ballots from persons whom the officers knew to have no legal right to vote and placing them in the ballot box; and, third, the writing of false names in the list of voters.

An examination of the records and evidence for similar cases of fraud as that set forth as to illegal registration is only found in the testimony of three witnesses and affect three voting districts, these witnesses being:

First. A man named Penczak from the first ward, fifth district, who was registered and was checked as having voted in the election of November 2, 1926. Penczak testified, among other things, that neither he nor two of his brothers paid for their poll-tax receipts for that year and that all were registered.

Second. A man named Schadt from the twentieth ward, eighteenth district, testified that he was a poll-tax collector for that district in 1926 and that he issued tax receipts to persons without receiving money for same from them. Mr. Schadt's testimony is not altogether without contradictory phases, in that he claims to have collected from some and to have marked the stubs for which he was paid with the letter "P." He was very positive as to this in one instance at least and yet no markings such as spoken of by him were found upon examination of the stubs from which the tax receipts issued by him came.

Third. A man named Doxie from the thirtieth ward, eleventh district. Mr. Doxie seems to have issued the tax receipts to certain ones, but evidently expecting later to be paid the money advanced by him to make the necessary payments.

An examination of the records and evidence for indications tending to show that the election officers received ballots from persons whom they knew to have no legal right to vote and allowing them to place the ballots so given in the ballot box discloses the following:

In 19 districts names appeared upon the voters' list which could not be identified with any names found on the registration book. In 10 of these districts one such name appeared, in 4 districts two appeared, and in 5 districts three names appeared.

The records also show 28 districts in which some one or more names occurred the second time which could not be identified with names on the registration book. Five of these districts are the same as 5 of the 19 districts first-above referred to, so that there would be 42 districts in which names may have appeared on the list of voters which did not appear on the registration books and thereby indicating that in that number of districts there may have been received by the election officers ballots from other persons than those authorized by law to vote.

In arguing the case before the committee, the attorneys for the contestant listed 10 names by which it was implied that the examiners had taken wide latitude in identifying names found in the list of voters, apparently, with other names found registered and checked as voting in the registration books.

There follows a list of these names, together with reasons for their identification, as set forth in the condensed report to which both parties had access.

(Page 173.) *Second ward, eighth district.*—Abraham Indiluatto found in list of voters sent to prothonotary charged as not registered but identified as Abraham Polovsky.

The name Abraham Indiluatto appears in the prothonotary's list of voters, followed by the name Anthony Frementa.

In the voters' list found in ballot box the name Abraham Indiluatto does not appear, but there is found the name Abraham Polovsky, which does not appear in the prothonotary's list, followed by the name Anthony Frementa, and Abraham Polovsky is registered and checked as voting.

(Page 173.) *Fourth ward, fifteenth district.*—The name Dave Gaskins is found for the second time in both lists of voters and only one person registered by that name, and he is checked as having voted once.

Leon Gray, who is shown to live next door to Gaskins and who is of the same profession, is registered and checked as voting, though the name does not appear in the list of voters.

(Page 173.) *Fourth ward, seventeenth district.*—The name Howard Suisman is charged as being in list of voters for this district on page 7, line 19. This name does not appear at any place in the lists of voters, and on the page and line referred to is found the name of Harry Perryman, which has been identified with the name of Howard Perryman found to be registered and checked as voting.

Seventh ward, sixth district.—The name M. C. Kefe is charged as being in the list of voters, page 1, line 31, and not registered.

Examination of the lists of voters discloses that on page 1, line 31, the name M. C. Kebe is found in the prothonotary's list, and the name Robert McCabe is in the list from ballot box—it being evident that one clerk got the full name of Robert McCabe, who is registered and checked as voting, while the other got only the last name.

Seventh ward, seventh district.—Oscar Jackson is found the second time in both lists of voters, but the name appears once in registration book where it is checked as voting.

The name Christopher Gregory is registered and checked as voting, but is not found in list of voters.

Oscar Jackson as appearing the second time on list of voters is the only name not found identified on registration book, and Christopher Gregory, being the only name checked as voting on registration book and not found on list of voters. It was thought clear that the second writing of the name of Oscar Jackson was wrongly written in place of Gregory.

Seventh ward, twelfth district.—Elsie Cook appears in prothonotary list of voters and Elsie Lowder appears in the same relative position in list placed in ballot box.

(Page 174.) Elsie Cook does not appear in ballot box list, nor does Elsie Lowder appear in the prothonotary list. Elsie Lowder is found registered and checked as voting; Elsie Cook not registered.

(Page 30.) *Eleventh ward, eighth district.*—The name Sophie Feldman is found for the second time in the list of voters and only one person of that name registered. That the name of Richard English does not appear in the lists of voters at all, but is registered and checked as voting. Sophie Feldman No. 2 is the only name not identified with some name in the registration book and Richard English the only name registered checked as voting which does not appear on list of voters.

(Page 32.) *Thirteenth ward, eighteenth district.*—The name Geo. Burns appears on the prothonotary's list of voters but does not appear in the ballot box list of voters where in a corresponding position to that of Geo. Burns in the prothonotary list appears the name of Geo. Brown. Geo. Brown appears nowhere else in either list of voters. Geo. Brown is registered and checked as voting, while the name Geo. Burns does not appear upon the registration books.

(Page 32.) The name Harry Walker appears on the prothonotary's list of voters but does not appear on the list placed in the

ballot box. In the ballot box list, and in the corresponding position of Harry Walker as found in the prothonotary list, is found the name Mary Walker, which does not appear anywhere in the prothonotary list. Mary Walker is registered, checked as voting, but Harry Walker is not registered.

(Page 33.) *Fourteenth ward, second district.*—The name Bill Henderson is reported as duplicated in list of voters. The pages and lines referred to in list of voters show the name Bell Anderson and not Bill Henderson where first charged and that "Bill" Henderson does not appear at all in the list of voters, but "William Henderson" does in both in the second instance.

Owing to the fact that many of the clerks preparing the lists of voters were particularly poor scribes and whose education was undoubtedly very limited, evidenced by the spelling in those cases where the writing could be deciphered, there must be considerable doubt as to whether or not the names were or were not intended to represent some name on the registration book.

There were nine districts in which there were more ballots than there were names checked on either the registration book or names on the lists of voters. Two of the districts in this condition also show names on the list of voters which may not be identified with names on the registration book.

Inasmuch as the spoiled or void ballots were taken out and counted with the good ballots, sometimes as good and sometimes as void, without proper memorandum made, it is questionable whether illegal ballots in these instances were actually put into the ballot box.

Evidence of Mr. Penczak was to the effect that ballots were put into the ballot box in the name of some person who had not shown up at the polls and that his name was written on the voters' list then checked as voting in the registers and placed in the box.

The evidence as to the third kind of fraud, that of writing false names in the list of voters, is the same as that last above referred to.

Specification No. 30

It is charged that in at least 289 election districts there were no Democratic registrars, and that in 122 election districts, there was only one Democratic registrar instead of two in each district as required by law.

The law in Pennsylvania relating to the appointment of registrars provides among other things as follows:

Two of the registrars shall be members of the party polling the highest vote within the election district at the last preceding November election; and one at least shall be a member of the party polling the next highest number of votes at said election. (Sec. 6, act of July 10, 1919.)

Section 7 of the same act provides among other things as follows:

If more candidates are duly nominated as members of any party than it is entitled to have appointed, the commissioners (registration) shall appoint the candidate or candidates whom they consider most fit, and if there are not sufficient fit candidates nominated on behalf of any party, the commissioners may appoint other persons, without regard of any party, of whom they have knowledge.

Under the law of Pennsylvania, therefore, the registration commission may decline to appoint unfit candidates and no registrar can be appointed without the approval of three of the commissioners.

The power to control the appointment of registrars rests exclusively with the registration commission and by no stretch of the imagination can the registration commission in Philadelphia be connected up, from the record, with any conspiracy for any purpose.

The Republican organization in Philadelphia is not charged in any way with the selection of the registrars or for any action of the registrars or the commissioners themselves unless there is positive controlling proof that there was fraud, and there is no such proof.

Specification No. 31

It is charged that in at least 564 election districts, the votes were not tallied as required by law.

The record discloses that in 555 districts the tally was made by a straight line drawn horizontally through the squares made for the tally instead of tallying by vertical lines in the squares provided on the tally sheets.

Some of the papers found in connection with the election records indicate that the actual tallying had been made on separate papers and carried from such papers to the official tally sheets in the manner stated. This condition discloses an irregularity, possibly, but the validity of the election is not conditioned upon the provision as to whether there was any tally or not, nor is the validity of the election conditioned upon an exact compliance with the express provisions of the statute.

The statute of the State of Pennsylvania, act of June 10, 1923, as amended, provides:

The clerks [of election] shall each carefully enter each vote as read, and keep account of the same in tally papers prepared for the purpose.

It shall be unlawful for either judge or inspector, while counting the ballots or votes thereof, to have in his hand any pen, pencil, or stamps for marking ballots.

The foregoing quotation from the statute contains the only provisions relating to the keeping of tally sheets.

A ruling of the Supreme Court of Pennsylvania (286 Pa. 257) says:

If the judge of the election reads aloud the names of the candidates voted for and announces the vote for each candidate, the manner in which the ballots are sorted, counted, and inserted in the tally sheets is immaterial, if in these respects the procedure followed is reasonably calculated to produce accuracy in the count, and not contrary to the act of assembly.

Specification No. 32

It is charged that in at least 52 election districts the triplicate return sheets are missing in violation of law.

The fact that some of these sheets are missing, standing alone, is not evidence of fraud or conspiracy. It is but an irregularity which does not affect in any way the validity of the election. However, an examination of the records disclosed that in 57 districts the triplicate return sheets, directed to be placed in the prothonotary's envelope, were missing; that in 37 districts it was found that this sheet, which should have been placed in the papers with the ballots, was missing; but only in five districts was it found that both sheets were missing.

One copy of these papers was, after the election, in the possession of and examined by the court of common pleas.

Specification No. 33

It is charged that in a large number of election districts the ballot boxes containing the ballots, the election documents, and other paraphernalia were returned to the City Hall within so short a time after the closing of the polls that the ballots could not have been counted, the election documents signed, and returns made.

The evidence which was introduced before the committee in support of this charge is utterly unreliable, and, in fact, was not competent evidence at all.

This alleged evidence arises out of certain records made and kept at the City Hall in Philadelphia on the night of and days following the election.

The law requires the ballot boxes, after the election is completed, and other documents to be returned to the City Hall where they and the other election paraphernalia were received by representatives of the mayor and the prothonotary. There was no provision of law requiring the keeping of any record showing the time that the ballot boxes and paraphernalia were received at the City Hall.

The evidence shows that representatives of the mayor and prothonotary did receive these boxes and election records and that books were kept in which entries were made, purporting to show the time of the delivery of this election material at the City Hall.

No person who made any entry in either of the books regarding the time of receipt of the boxes and records was called to the witness stand. In fact, no witness was able to identify any person as a person who made entries in this behalf in either of these books.

Most of the times recorded in the books are silent as to whether it was afternoon, evening, night, or forenoon, or even on what day the boxes were received, nor was there any evidence to show that the entries by whomsoever made were made at the time the boxes and records were actually received, but the evidence does disclose that some of the records were made perhaps an hour after the receipt of the boxes.

These record books do not prove themselves because they are unofficial, and no witness has proved the authenticity of the entries of the time registered in either book.

The evidence upon which this specification of fraud is found is utterly without evidentiary value.

Furthermore, many witnesses were called from various voting districts to testify that they were officials in some election district and participated in the delivery of the ballot boxes and paraphernalia at the city hall and declared about the time at which the boxes were actually delivered at the city hall.

This testimony by the people delivering the boxes and records was widely at variance with these so-called records made at the city hall.

Governor Pinchot was called to the witness stand by the contestant and testified concerning what he saw in Philadelphia on the night of the primary-election day in 1922, when he was a candidate for governor.

The important part of this testimony is as follows:

Mr. PINCHOT. The first important case which came to my knowledge occurred in the fall of 1922 on the evening of election day. Mrs. Pinchot and I had voted in Milford and were going to Philadelphia by train. As we passed city hall about 9.30 in the evening we met a procession of illuminated carts carrying upon them in red letters the returns of the so-called river wards, the Vare-controlled wards in Philadelphia. The polls had closed at 7 o'clock. This was less than three hours after the polls had closed.

We then went to my headquarters, listened to the returns during the rest of the evening, and believed at one time that I had been defeated.

This related to a primary election more than four years before the general election under consideration, and, of course, what happened in the primary election of 1922 is not evidence that it happened in 1926 at the general election, or at any other election, and it does not even support the notion advanced that the returns at that primary election had not been legitimately found and given to the public.

Specification No. 34

It is charged that in a large number of election districts ballots show that they were marked by some person other than the voter who put them in the ballot box.

No evidence was offered tending to sustain this charge; and, furthermore, the laws of Pennsylvania in force at the time of the election under consideration expressly permitted any voter, upon request, to have assistance from some other person in the making out of his ballot. (Act 1893, sec. 26, P. L. 432.)

The evidence does not disclose that anybody, unrequested, aided any voter or interfered with any voter, except it appear in connection with the specific voting divisions wherein there is evidence tending to show actual fraud, which will be hereinafter discussed.

Specification No. 35

It is charged that in a large number of election districts marks upon the ballots were altered and erased after the closing of the polls and the opening of the ballot boxes for counting.

The ballots referred to in this specification were protested by the contestant, segregated, and referred to the subcommittee for its examination.

There were ballots found in the ballot boxes showing erasures, but no person has testified that any such erasure was made by any other person than by the voter of the particular ballot.

There is not the slightest evidence to show that any ballot was in any way marked or erased or remarked or changed after it was deposited in the ballot box by the voter who cast it.

The Supreme Court of Pennsylvania (249 Pa. 297-307) declared that such erasures do not invalidate the ballot and indicate merely a change of mind on the part of the voter himself.

In this election there were not only ballots for Mr. Vare containing erasures, but there were ballots also for Mr. Wilson containing erasures of similar character.

There being no evidence in the record tending to support the technical allegations of the charge or tending to show fraud in con-

nection with the markings or the erasures, the charges necessarily must be dismissed.

Specification No. 36

It is charged that in a large number of election districts ballots that had never been creased or folded were found in the ballot boxes, showing that they had been placed in the ballot box after the close of the polls, and that in a large number of election districts ballots were found in the ballot boxes so folded that they could not have been placed in the ballot boxes until after the closing of the polls.

It must be borne in mind in considering this charge that all of these ballot boxes had been opened, the ballots examined, straightened out, compared, and counted, and then put back in the box after the count by the election officers, frequently in groups, sometimes folded and sometimes unfolded, sometimes crumpled and jammed together, and in other conditions tending to affect or destroy the physical integrity and physical condition of the ballots existing at the time when first put into the ballot box by the voters.

All the ballots protested under this charge by the contestant were segregated and submitted to the committee.

Some of such ballots, when the boxes were opened by the committee, disclosed but faintly a single crease; some of them failed to disclose any recognizable crease; some were crumpled and apparently without crease.

The aperture in the ballot boxes used in the election were of the dimensions following: 6 inches in length and three-fourths of an inch in width. The aperture was the same size as in the case of Pittsburgh.

Statutes of Pennsylvania in force at the time of the November election, 1926, provided, among other things, as follows:

As soon as a voter is admitted within the rail the election officer having charge of the ballots shall detach a ballot from the stub and give it to the said voter, but shall first fold it so that the words printed on the back and outside, as provided in section 15 of this act, shall be the only wording visible, and no ballot shall be voted unless folded in that manner.

Section 21 of the act of 1919, among other things, provides:

Before leaving the voting shelf or compartment the voter shall fold his ballot without displaying the markings thereon in the same way it was folded when received by him, and he shall keep the same so folded and deposit it in the ballot box without undue delay and shall quit the inclosed space immediately thereafter.

These provisions of statute are directory; they do not declare that any ballot shall be void unless the provisions of these statutes are complied with nor is the validity of the election involved by reason of a mere noncompliance with these provisions, but there is no provision of statute requiring any ballot be so folded and pressed down that it shall be permanently or otherwise creased.

The statute requires the ballot to be so folded that no words printed on the face of the ballot shall be visible. This undoubtedly is for the purpose of preserving secrecy in voting.

The law would be complied with and strictly complied with if a ballot was folded loosely, once only, and not creased at all, and then handed to the voter, because if the ballot was folded inwardly, concealing the words on the face of the ballot, the law would be com-

plied with, and further, if, upon the return of the ballot by the voter after marking it, it was folded in the same way without creasing, but in fact concealing the names and markings upon the face of the ballot, the statute would not be in any way contravened.

The number of ballots charged to be nonconforming to the provisions of this statute is 704, and were found in 128 different districts of Philadelphia.

The aperture of the ballot boxes used is rather large, and if any voter received a ballot in the condition above indicated and when returning to put it in the ballot box, returned it in the same condition but merely rolled up without creasing, the ballot could readily be put through the aperture and into the ballot box without there being a crease made on the ballot and without in any way whatsoever affecting the physical integrity of the ballot or the condition in which it was when torn from its stubs. This has been and readily can be demonstrated.

The presumption is, of course, that the election officers performed their duty and every ballot found in the ballot box is presumed to have been put there legally unless the contrary is shown.

Various reasonable explanations might be made for the appearance of the ballots challenged by the contestant which would quite satisfactorily tend to support the presumption that the ballots were legally cast and deposited in the box.

There are some divisions where there is evidence tending to overthrow the presumption referred to with reference to such ballots. All these districts will be reviewed hereafter in a paragraph of this report devoted to that subject.

Other than the districts excepted, there was no evidence except the ballots themselves upon which to predicate the charge which the contestant makes under this specification.

Specification No. 37

It is charged that in a number of election districts, there are impressions on the ballots of cross marks in the columns in addition to marks made by the voter, evidencing the fact that other ballots were marked while superimposed on these particular ballots in violation of the law.

The ballots containing these impressions were protested by the contestant, segregated, and submitted to the subcommittee.

These impressions appear on the protested ballots in the form described in the specification, but without any trace of color of ink, pencil, or stencil.

There is no evidence, except the impressions themselves upon these ballots, either as to how, why, when, or by whom, they were made. It has been suggested in argument that these impressions may have been made by the election officers in marking their own ballots before detaching them from the underlying ballots in package, but there is no evidence disclosing this to be a fact.

There are only eight ballots, bearing these impressions, protested by contestant in Philadelphia distributed among five districts.

These impressions do not, in or of themselves, prove or tend to prove any fraud or to prove any attempt upon the part of anybody to aid in bringing about a fraudulent election or a fraudulent count

or election return or to deprive any candidate of a vote or any voter of his right to have his legitimate ballot cast and counted.

Specification No. 38

It is charged that in many thousands of cases the law of the State of Pennsylvania concerning the payment of poll taxes was violated and poll-tax receipts illegally issued for the purpose of qualifying persons as voters.

Eliminating from the consideration of this specification the voting districts in which there is evidence tending to show fraud, in this regard, hereinafter referred to, there is no sufficient substantial evidence to invalidate poll-tax receipts issued in Philadelphia.

When a person in Philadelphia applies to be registered as a voter and has not paid a personal or property tax, he must, before he can be registered, have his name upon the assessment roll and he must pay a poll tax of 50 cents, which will qualify him for the two years succeeding the payment of the tax to be registered as a voter.

These poll taxes, when collected, pass into the hands of the receiver of taxes of the city of Philadelphia.

The city of Philadelphia provides poll-tax receipts attached to a stub with a perforation between the receipt and stub and these are bound in packages of 50 each, and are distributed to the poll-tax collectors in the various voting districts of the city.

The registration commission appoints the registrars, four in number, and the receiver of taxes must select in each voting district, as a deputy poll-tax collector, one of these four registrars.

Any person applying to be registered, if he has not otherwise paid a tax, must pay the poll tax before he can register and receive a receipt therefor from the poll-tax collector of the kind furnished by the city authorities.

The entire registration for the election of November 2, 1926, was made by the registration commission subsequent to the first day of September, 1926.

With the exceptions above noted, there is no evidence in the record showing any fraud or illegality in the payment of any poll tax in Philadelphia or the issuance of any receipts therefor by the poll tax collector, except such evidence as the stubs to which the receipts issued were originally attached disclose. Upon quite a large number of such stubs are notations of different character in different voting districts—sometimes a cross, sometimes a tick, sometimes the letters "Pd", sometimes a letter of the alphabet, and sometimes a combination or symbol made up of letters of the alphabet. These markings vary greatly in the various districts and frequently in the same district. Practically all of the stubs from which receipts were issued and detached during the fall registration for the election of November 2, 1926, were forthcoming and before the committee.

The testimony derived from a large number of poll-tax collectors varied nearly as much as the difference in the characters appearing on the stubs. Some testified that the marks were not put there by them and that they did not know by whom they were placed on the stubs. Some testified that the marks were not on the stubs when they returned them to the treasurer's office. Some few testified that they had made certain marks to indicate certain specific things. All

save two testified that the money for the tax receipts was paid for in every case by the registrants, these two witnesses being named Doxie and Schadt, respectively.

Doxie testified that he issued the receipts to many of the registrants without actually receiving the money for them at the time of issuance, but was unable to state how many he had failed to collect from afterwards, though he was sure he had not collected from all.

Schadt testified that he did not receive money for tax receipts issued by him except in a few cases, possibly 10; that he had written upon the stubs of the tax receipts the letter "P" where they had been paid for. He then modified this statement by saying he was not sure that he had done this in all cases, but he did do so particularly in one instance. Examination of the stubs from which receipts were issued by him discloses the fact that there is not on a single one of these stubs any such letter or any other marking other than that required to be filled out, namely, the number of the division, the number of the ward, the name of the person to whom issued, and the date of payment.

Five of the collectors did testify that receipts were issued to one or more persons applying without receiving at the time the money, but that they were afterwards paid.

A man by the name of Penczak testified that he lived in the first ward, fifth district; that neither he, his father, nor brothers paid for poll-tax receipts which they got when they registered.

A man named Lovey testified that in 1927 he was a poll-tax collector; that under the direction of the committeeman of that district he issued receipts without having been paid for them.

Mr. Lovey replied "yes" to the following question:

Did all of the persons who paid you poll-tax money to whom you issued poll-tax receipts pay you the money themselves?

Mr. Lovey testified that he placed an "X" on the stub of the poll-tax receipts, which meant that the receipt had not been paid for; that he collected that money from the committeeman by name of Ginneman. Lovey testified that the committeeman told him that he would settle up the bill with him when the registration was all settled, as he was expected to collect the money; then stated that this committeeman did not settle with him, but referred him to Mr. Lowrey, who was supposed to be assistant to Mr. John R. K. Scott, who he supposed to be the ward leader. He does not state whether either Mr. Lowrey or Mr. Scott made any settlement with him.

It is charged by the contestant that in several districts, namely, tenth district, sixteenth ward; third district, thirty-first ward; sixth district, eighteenth ward; thirteenth district, twenty-fifth ward; thirty-ninth district, twenty-sixth ward; thirtieth district, twenty-fifth ward; and the first district, twenty-seventh ward, there were certain calculations, as shown by figures or notations on the books of the stubs which would indicate that quite a number of the tax receipts had been issued without payment therefor. In these particular districts no oral testimony was taken to sustain the conclusions drawn by the contestant.

In the sixteenth ward, tenth district, attention was called to figures on the back of the book of stubs indicating that there were 83 receipts

sold, 17 having been paid for and 66 not paid. These 83 receipt stubs would indicate that 52 had been sold on September 2, that 15 had been sold on September 14, and the balance on October 2.

The notation complained of was made on the stub book which contains stubs all dated as of September 2. The law as set forth in the act of 1913, section 3, P. L. 995, provides that the poll-tax collectors shall make a full return of all moneys (less their commissions of 10 per cent) and blank receipts, received by them, on or before the second day next succeeding each registration day, from which it would appear that the figures were intended rather to show the amount due to be paid by the tax collector to the receiver of taxes than to show tax receipts, not paid for by the registrants.

On this particular book of stubs notice is taken only of the notations on the back cover, while none was taken of the notation found on the front cover, the front cover showing the total number of tax receipts issued, the amount received for them and deducting the commission, and then showing the balance due.

In endeavoring to find out whether or not persons receiving the tax receipts had voted, we find in this district that two of the persons so receiving the tax receipts were not registered and nine, while registered were not checked as having voted.

In the next district to which attention has been called—the third district of the thirty-first ward—there were two full books of tax receipts sold and a part of the third. The first book contains the stubs indicating that 35 tax receipts were issued on September 2 and 15 on September 14. It would appear that the memorandum showing 16 not paid and 34 paid was made by some other person than the person filling out the stubs of the tax receipts. This book of stubs should have been turned in not later than the 16th of September.

The second book for the same district, which contains 39 stubs dated September 14 and 11 dated October 2, has a notation on the back of the book “19 paid” and “31 not paid.” This same book has two additional notations about which no remark has been made, to wit, “26.80” in one place and “8.25” in another place. The third book of stubs for this district contains no memorandum of any kind whatever. There is no evidence whatever in the record explaining the presence or meaning of these notations in these cases.

In this district there were two persons receiving tax receipts who were not checked as voting.

The next district to which attention is called is the sixth district, eighteenth ward. Again the figures cited do not appear to have been made by the same person entering the names and information on the stubs of the receipts and could well mean the amount due from the collector to the receiver of taxes.

In this district there were two not registered and five, while registered, were not checked as voting.

In the thirtieth district, twenty-fifth ward, the memorandum referred to by the contestant is found on the book of stubs covering receipts issued on the 14th of September. The stubs of the receipts issued on the 2d of September filled a complete book and under the law should have been turned in to the receiver of taxes not later than the 4th of September, which would again indicate that the memoran-

dum was made by some person in the tax-receiver's office in order to determine the amount to be paid by the collector of taxes to the receiver.

In this district 4 of the 31 persons whom it is charged did not pay for their receipts were found not checked as having voted.

The law undoubtedly is that each person applying to be registered as a voter must personally pay the tax or give a written order to some other person authorizing such person to pay the tax for him; in other words, that the payment of this tax is personal, under the statute.

None of the marks to which reference is made by the contestant were required to be put upon the stubs by any provision of statute. The only things required by the law to be placed upon the stub were the date, division, ward, and name of the person to whom the receipt was issued; nothing else.

After these stubs were returned to the office of the receiver of taxes for the city of Philadelphia, they were all sent to another officer of the city for checking in order to determine whether or not the money was forthcoming for each tax receipt detached from the stub.

Nobody knows—at any rate, nobody has testified—when or how nearly all of these marks were made, nor for what purpose. They are matters purely extraneous to the record required to be made.

They do not, in and of themselves, in any way, invalidate any registration, or prove the nonpayment of taxes or the illegal issuance of the tax receipts. All that is shown is the presence of the marks, and the contestant seeks to have the conclusion drawn from the presence of these marks that they indicate, perhaps prove, that there was fraud in the issuance of tax receipts and the registration founded upon them in a large number of cases, and that large numbers of persons were, in fact, registered without personally paying the tax.

It is a far cry from the mere presence of these marks alone without further evidence to the conclusion that there was fraud. A great many of the poll-tax collectors were brought to the witness stand and nearly all of them testified that every receipt that was issued was paid for by the person applying therefor personally.

One witness, Penczak by name, of the fifth ward, first district, testified that voters who were registered did not pay their taxes, but it happens that in that voting district there are no marks appearing on the stubs; no marks whatsoever except those required.

With the two exceptions, Lovey and Schadt, every poll-tax collector called to the witness stand testified that every person applying for a tax receipt personally paid his tax, and there was no evidence put into the record contradicting any of such testimony.

It also appears from examination of these stubs in some divisions that there was a mark of some kind or other upon every stub, without exception, in which divisions some of the voters were Democrats and some independents.

These stubs with their various marks, alone, do not bear any convincing evidence of fraud or evidence that poll-tax receipts were issued without payment of the tax by the very person to whom the receipt was given.

Specification No. 39

It is charged as follows:

The existence throughout the city of Philadelphia of the same and identical methods of fraud and illegal voting, coupled with the following: The complete control of the election machinery of the city of Philadelphia by the Republican city central committee composed exclusively of public officeholders; the control by the Republican organization of the assessors' lists, upon which the right to register is based, there being but three Democratic assessors out of 1,500 in the city of Philadelphia; the refusal by city council composed exclusively of members of the Republican organization to furnish funds for the proper purging of the registration lists; the control of the printing and distribution of the official ballots as above specified is conclusive evidence of a conspiracy to defeat your contestant, William B. Wilson, and to secure the election of the contestee, William S. Vare, as United States Senator from Pennsylvania.

The charges in this specification are rather broad; not only broad, but they assert, in fact, the actual existence of fraud and illegal voting throughout the city of Philadelphia at the election under consideration.

Proof that fraud and illegal voting pervaded every division of Philadelphia would, of course, require a complete disregard of the election in its entirety in the city, but the legitimate evidence adduced is utterly insufficient, except in the cases of a few isolated districts, to overcome the presumption that legal elections were held in all the districts of Philadelphia.

The same given irregularity, if an irregularity may be considered an evidence of fraud, does not pervade many of the precincts of the city. The irregularities cited in support of the contestant's contention radically differ in different divisions. No one irregularity pervades all the voting districts of Philadelphia.

Conspiracy rests upon a common understanding or upon a unanimity of action evidencing a common purpose and understanding by a group of individuals to do certain specific things as a means to the accomplishment of a definite, certain, ultimate object.

There is no sufficient evidence in the record to sustain any such theory.

The contestant, after the declaration of the existence of this fraud and illegal voting throughout the city of Philadelphia, couples with it, perhaps because he feels the assertion is not well supported, the charge that the complete control of the election machinery in Philadelphia was in the Republican city central committee, composed exclusive of public officeholders.

It can not be assumed, it certainly has not been proved, that the registration commission or any of its members, officers, agents, or employees, were a part or parcel of the Republican machine in Philadelphia, or participated in any fraud or performed any fraudulent acts even remotely relating to the election under consideration.

The evidence shows that they were not, and there is no evidence tending to show that they were, in any way connected with any conspiracy looking toward an illegal election in 1926.

The fact is that this commission and the Republican organization did combine and act together for the purpose of purging the registration late in 1925 or early in 1926 and that a very large number of names were stricken from the registration lists; but the registration in existence at that time was not the registration for the November

election, 1926, because the registration for the latter election was entirely new and made subsequent to the month of August, 1926, and, in fact, under this registration there were approximately 175,000 less people registered for the November election, 1926, than for the spring primary election of 1926 in Philadelphia.

But there is no proof that the Republican city central committee functioned in any illegal way in connection with this election except that possibly in a very few cases members of that organization were connected with alleged fraud in certain specific districts, but there is not the slightest evidence that anything that was done fraudulently or illegally in any given voting district was done by connivance between the election officers or members of the organization of that particular district with the election officers or members of the committee in any other district.

It must be borne in mind always that the judge and the inspectors of the election in each district in 1926 in the city of Philadelphia were elected at an election by the voters of the district in 1925 and not appointed by any political organization.

It is charged that the Republican organization was in control of the assessor's lists upon which the right to register was based, but there is not a scintilla of evidence in the record tending to show any wrongdoing or attempt to perform any illegal act on the part of any of the assessors.

The charge is preferred that the city council, composed exclusively of members of the Republican organization, did not furnish funds for the purging of the registration lists, but this was not in connection with the November election of 1926. This controversy arose in the year preceding, and the registration lists were then, in fact, purged by the registration commission aided by the Republican organization of the city of Philadelphia.

The charge is also contained in this specification to the effect that the Republican organization controlled the printing and distribution of the official ballots.

In this regard, it is enough to say that there is no evidence in the record tending to show that there was anything wrong about the printing or distribution of ballots which in any way affected the legality of the election itself or of any ballot that was voted or furnished to the election officers.

The only complaint about the printing is that the city of Philadelphia paid too much for it.

The criticism of the method of distribution of the official ballots is without foundation. The statute provides as follows (sec. 17, amended ballot law) :

The ballots, together with the specimen ballots and cards of instruction printed by the county commissioners as herein provided, shall be packed by them in separate sealed packages with marks on the outside clearly designating the election districts for which they are intended and the number of ballots of each kind inclosed.

They (the ballots) shall then be sent by the county commissioners of the respective counties to the judge of election at the several voting places so as to be received by them on the Saturday or Monday before the day of election.

It is also provided that the county commissioners may, if they prefer, instead of sending the packages of ballots to the judges, or any of them, notify the judges of election to come to the commis-

sioner's office on the day before election and receive the ballots for their respective divisions.

There is no evidence in this record showing that the election officials in any district did not receive, prior to the election, all of the official ballots allotted to their respective voting divisions in properly sealed and properly marked wrapping.

Embraced within this specification is the charge that the number of ballots cast exceeded the number of names on the lists of voters or the number of names checked in the voters' check lists.

The records disclose that there were 90 districts in Philadelphia in which there were more ballots than names checked on the voters' check lists and that there were 26 districts where there were more ballots than there were names on the lists of voters, but there are only nine districts in the entire city of Philadelphia wherein the ballots, in fact, exceeded both the names on the voters' list and the names checked on the voters' check list.

These districts are as follows:

- Eighth ward, eighth district,
- Twenty-fourth ward, fortieth district,
- Thirty-ninth ward, sixth, thirty-second, and thirty-fourth districts,
- Fortieth ward, fortieth district,
- Forty-fourth ward, fourth and fifth districts,
- Tenth ward, ninth district,

and the number of ballots in these districts in excess of the names appearing on both the voters' list and voters' check list is 84.

In 19 districts, there were 33 names appearing on the list of voters which your committee has not been able to identify definitely with names on the voters' check list. There were 28 districts where a name appeared twice on the list of voters, the second of which could not be identified with any name on the voters' check list.

In 121 districts where ballots were protested on the ground they were uncreased or unfolded or so folded they could not have been put through the slots in the ballot boxes, the number of ballots challenged was 744.

The list following shows those districts in which there has been introduced or found evidence tending to show that fraud in the election or in the registration affecting the election of November 2, 1926, was found, and of which reference has heretofore been made:

| Ward | District | Ward | District |
|--------------------|--------------------------------------|--------------------|---|
| First..... | Fifth. | Twenty-seventh.... | Ninth. |
| Second..... | Ninth. | Twenty-eighth..... | Eighteenth and thirty-second. |
| Third..... | Eleventh, fifteenth, and eighteenth. | Twenty-ninth..... | First. |
| Fourth..... | Sixteenth. | Thirty-third..... | Do. |
| Fifth..... | Eighth. | Thirty-sixth..... | Second and fifth. |
| Seventh..... | Twelfth and twenty-seventh. | Thirty-ninth..... | Sixth, eighth, twelfth, twenty-second, twenty-eighth, thirty-second, thirty-fourth, and thirty-sixth. |
| Eighth..... | Eighth. | | |
| Ninth..... | Do. | Fortieth..... | Fortieth. |
| Tenth..... | Ninth. | Forty-first..... | Fourth. |
| Twelfth..... | Third. | Forty-third..... | Eleventh. |
| Seventeenth..... | Thirteenth. | Forty-fourth..... | Fourth, fourteenth, and thirty-fourth. |
| Eighteenth..... | Fifteenth and eighteenth. | Forty-fifth..... | Fifth, sixth, sixteenth, and twenty-second. |
| Twentieth..... | Sixteenth. | Forty-sixth..... | Fifty-second. |
| Twenty-first..... | Fifteenth and twenty-seventh. | Forty-seventh..... | Second and twenty-fifth. |
| Twenty-second..... | Fifty-eighth. | Forty-eighth..... | Eleventh. |
| Twenty-fourth..... | Fortieth. | | |
| Twenty-fifth..... | Twelfth and twenty-seventh. | | |
| Twenty-sixth..... | Eighteenth. | | |

Of the 53 districts above enumerated in which there was found 16,397 ballots of which 1,627 were claimed by Wilson and 14,770 by Vare, there are 13 in which there was found only one thing which might tend to show fraud, and in these examiners of the records were unable to identify one or more names in the list of voters with names registered and checked as voting.

In 20 districts the only thing tending to show fraud was that there was one or more names duplicated in the list of voters that the examiners failed to identify with name registered and checked as voting.

There were five districts where there were names written in list of voters and also duplicated names in the list of voters which the examiners were unable to identify with names registered.

There were five of these districts in which the only thing out of regular order was that more ballots were found than there were names either on the list of voters or checked as voting.

In two districts indictments were found in the courts of Pennsylvania, charging the writing of names unlawfully in the list of voters for the purpose of concealing unlawful deposit of ballots, but, in the trial of the case there was an acquittal in each instance.

In one district an indictment was found of fraudulently entering names in the registration book. There was an acquittal also in this case.

In one district indictments were found charging fraudulent registration and unlawful voting, and convictions were had in both cases.

In one district indictments were found charging false returns of votes at the election. There was a conviction in this case.

In one district there was an indictment found charging receiving votes of persons not entitled to vote and willful fraud in writing names in the list of voters for the purpose of concealing the deposit of fraudulent ballots. In this district there were found, as shown by the record, duplicated names in the list of voters which the examiners were unable to identify with names registered.

In one district there was found a name or names which the examiners were unable to identify in the registration book and in this district there were also found more ballots than there were names either checked as voting or on the list of voters.

In one district there were more ballots than there were names checked on registration book.

In one district there were more ballots than were found names checked as voting in the registration book or names on list of voters. The ballots were also in excess of the names on the registration book.

There was one district in which a witness testified that he had received a tax receipt without paying for it and had registered on this receipt, and there was also a district in which the tax collector said that he had issued receipts without payment to enable persons to register.

PITTSBURGH

CONTESTANT'S SPECIFICATIONS OF FRAUD

Specification No. 1

It is charged that in at least 80 per cent of the election districts, the regular official ballots were distributed to the election districts

in an illegal manner and to persons not properly authorized by law to receive them.

Specification No. 2

It is charged that the ballots were not distributed in the various election districts in the city of Pittsburgh in the numbers required by law.

Specification No. 3

It is charged that the record of the number of ballots ordered to be printed by the county commissioners in the county of Allegheny was destroyed for the purpose of concealment.

Specification No. 4

It is charged that in at least 493 election districts the ballots were not distributed as required by law in multiples of 50 ballots for every 50 voters or a fraction thereof assessed in each particular election district.

The foregoing four specifications may be considered together.

There is not the slightest evidence in the record tending to show that the official ballots caused to be printed by the county commissioners were not received by the proper election officers in their respective voting divisions in their original sealed packages, properly allotted.

The record does not disclose the exact number of ballots actually delivered to the respective voting-district officials, but an examination of the used ballots and the unused ballots and stubs indicate that instead of distributing at least 50 ballots for each 50 persons assessed and fraction thereof there were delivered to each voting district a number of ballots approximately equal to the number of persons registered in each such division plus 10 per cent of such number.

The evidence shows that the record in the county commissioners' office, regarding the number of ballots ordered to be printed, was either lost or destroyed, but the evidence does not show any purpose of concealment.

In any event the evidence does not disclose that the printing or delivery of the ballots, or the number in which they were delivered to any voting district had any effect or influence in any way upon the election in any voting district, except in four districts, viz, Second ward, ninth district; eighth ward, twenty-second district; eleventh ward, twenty-third district; and seventeenth ward, twenty-third district, in which 10, 2, 3, and 3 sample ballots, respectively, were found that had been used for voting in place of the regular official ballots; 16 of these ballots were marked for Vare, and 1 for Wilson. All of these ballots were thrown out as void in the recount, but which had been counted by the election officials.

The contestant seems to criticize the printing and delivery of ballots in Pittsburgh because there were not as many printed or delivered as the law requires, or at least, permits, but the deficiencies, if any, in this regard did not in any way affect the contestant in the election in Allegheny County.

Specification No. 5

It is charged that a great many election districts had less stub returns than the number of ballots issued.

Specification No. 6

It is charged that in a great many election districts the stubs from which the ballots had been detached exceeded the number of ballots actually used as found in the ballot box.

The official ballots were put in sealed packages of a definite number of ballots each, and the ballots in each such package were fastened together by metal brads or nails. Neither the stubs nor the ballots bore any numbers or other marks of identification, nor was there any method of identifying any particular stub as the stub from which a given ballot may have been detached.

There was no line of perforation between the stub and the ballot itself, in the Allegheny County ballots, along which the ballot could be detached from the stub. There was necessity that the ballot be cut or torn from the stub, and in cutting or tearing one ballot from the stub, several might be cut or torn with it at the same time.

If an attempt was made to tear the ballot from the stub without cutting, the stub would frequently be drawn out from its fastenings still attached to the ballot and no stub left in the packet of stubs from which the given ballot was drawn.

This fact was demonstrated by an examination of the ballots in the ballot boxes where in some instances, the ballot with its own stub attached was deposited in the ballot box.

This is enough to show that there were some packages of stubs which did not contain stubs in a number equal to the number of ballots found in the ballot box.

In many instances, the package of stubs would have only a small piece of paper behind the fastening which was left there when the ballot was detached from the stub.

The investigation shows that it is impossible to ascertain accurately and certainly what the actual number of stubs may have been for the reasons stated.

It is impossible in the very nature of things to determine the truth with reference to either one of these specifications, but the evidence utterly fails to overcome the presumption of regularity in the balloting proceeding or the validity of the ballots cast.

Specification No. 7

The contestant has withdrawn this specification.

Specification No. 8

It is charged that in many of the election districts more than one ballot was issued to individual voters contrary to law.

Specification No. 9

It is charged that in a great many election districts what is commonly known as "chain voting" was practiced.

The two specifications last aforesaid may be discussed together.

There is not the slightest evidence in the record anywhere that more than one ballot was issued to any individual voter contrary to law. A second ballot might have been issued in some of the districts to the same voter when he returned a ballot to the election officials which had been spoiled. This could be done under the law, but outside of that, there is no evidence to sustain the charge nor is there any evidence in any election district in Allegheny County that what is claimed to be, and described to be, "chain voting," was practiced.

Certain theories are put forth by the contestant in an endeavor to sustain these charges; but the presumption of regularity and legality can not be overthrown except by actual proof of some fraud on the part of the election officials.

Specification No. 10

It is charged that in a large number of election districts the ballots show that they were marked by some other person than the voter who deposited them in the ballot box.

The evidence relied upon by the contestant to support this charge consists exclusively of certain ballots themselves found in 170 different districts in Pittsburgh, 771 in number.

These ballots were protested for erasures, it being claimed that the voter's mark on the ballot had been erased and a cross placed for another candidate on the ballot by some other person.

There was no evidence to sustain this charge.

There were ballots where there were erasures and a cross placed opposite the name of some other candidate, but this fact alone does not disclose fraud nor does it prove that the voter himself did not make the erasure or the second cross. The only question really involved in these cases is whether the ballot, by reason of the erasure and re-marking, has lost its validity for any purpose.

In the event the contestant means by this specification that some person other than the voter himself marked the ballot before it was cast, no erasure being involved, the answer is that that fact alone would not make the ballot illegal or void, because any voter, under the law then existing, was permitted to have assistance in preparing his ballot, upon making the request; but the evidence does not disclose that there was any marking of these ballots by any other person than the voter himself, and, of course, the presumption is directly in opposition to the charge of the specification.

Specification No. 11

This specification covers the same ground and relates to the same matters as in the preceding specification 10.

Specification No. 12

It is charged that in a large number of election districts, ballots that had never been creased or folded were found in the ballot boxes, showing that they were placed in the boxes after the closing of the polls, and, in a large number of election districts, ballots were found

in the ballot boxes so folded that they could not have been placed in the ballot boxes until after the closing of the polls.

Contestant protested 324 ballots in 32 different districts on the grounds specified.

No other evidence than the appearance of the ballots themselves was introduced to sustain the charge.

In 19 of these districts it is charged that there were no creases; in 13 it is charged that the creases were insufficient. Of course, the law does not require ballots to be creased in any degree, and the discussion of similar charges in connection with specification 36 of the Philadelphia charges cover this specification.

Specification No. 13

It is charged that in some election districts impressions were found on ballots of cross marks in addition to the marks made by the voter, evidencing the fact that other ballots were marked while superimposed on the ballots bearing the impressions.

The contestant protested three ballots in three districts as evidence of this charge.

There is no evidence in the record showing how these impressions were made nor by whom nor when they were made.

This charge is based upon exactly the same conditions found in Philadelphia, and the discussion of Specification 37 in the Philadelphia charges may be referred to for the conclusions of the subcommittee in regard to this specification.

Specification No. 14

It is charged that in a large number of election districts in Pittsburgh persons voted who were not registered in the district in which they voted.

The contestant, in his bill of particulars, has specified the names found on the list of voters claimed to have not been registered.

All the names specified by the contestant, however, except three, in three districts, to wit:

Third ward, fifteenth district,
Fourteenth ward, twenty-eighth district,
Twentieth ward, twenty-fifth district,

have been identified by the subcommittee with names on the registration books within and for the particular districts against which the charge is made.

In the third ward, fifteenth district, the person voting and not personally registered was listed as a Democrat.

Specification No. 15

It is charged that in the city of Pittsburgh the tax assessment lists were padded so as to admit the registration of persons not entitled to vote to the extent of at least 56,000 names.

The statute of Pennsylvania providing for the assessment for taxes which is applicable to the county of Allegheny, Pa., provides as follows:

7. The assessors * * * of the several counties shall, on the receipt of the precepts aforesaid, proceed to take an account, in the form directed by the commissioners, of the names and surnames of all the taxable inhabitants within their respective wards, townships, and districts, and also an account of the following real and personal property:

I. Real estate, viz: All houses, lands, lots of ground and ground rents, mills and manufactories of all descriptions, all furnaces, forges, bloomeries, distilleries, sugarhouses, malt houses, breweries, tanyards, and ferries.

II. The following personal estate, viz: All horses, mares, geldings, and cattle above the age of four years.

III. All offices and posts of profit, professions, trades, and occupations, and all single freemen above the age of twenty-one years who shall not follow any occupation or callings. (Act 1834, sec. 4, P. L. 512.)

The statute also provides that—

2. It shall not be lawful for any assessor to assess a tax against any person whatever within sixty-one days next preceding the annual election in November; any violation of this provision shall be a misdemeanor and subject the officer so offending to a fine, on conviction, not exceeding one hundred dollars, or to imprisonment not exceeding three months, or both, at the discretion of the court. (Act 1874, sec. 18, P. L. 40.)

Under these provisions of the statute it is hardly possible to pad the assessment list, unless fictitious names are put upon the lists, because every person having an occupation of any kind is assessable and should be upon the assessment list, no matter whether resident, alien, or otherwise, and, further, every single freeman above the age of 21 is properly placed upon the assessment roll, whether he has any occupation or calling or not.

The principal testimony relating to this subject was given by Col. Charles C. McGovern, presently one of the county commissioners of Allegheny County, and previously, and during the years 1924, 1925, and part of 1926, a member of the registration commission of the city of Pittsburgh.

Mr. McGovern stated that early in the year of 1924 he ascertained, as chairman of the board of registration commissioners, from the proper office, the names of 177,000 persons who appeared upon the assessment rolls, and who had not paid their taxes, and proceeded to send and did send certain notices to each one of these persons; and that 56,000 of these communications were returned as non-deliverable.

There is no statement or suggestion in the evidence that any one of these 177,000 persons so addressed was on the registration list as a registered voter. Furthermore, there is no evidence whatever which even indicates that any one of these 177,000 people, or any other person, had been improperly placed upon the assessment roll by the proper assessing officer.

This specification is based upon the testimony of Mr. McGovern, but McGovern's testimony fails to show anything whatever of irregularities or illegalities in the assessment roll. It merely shows that 177,000 people were found in Pittsburgh on the assessment roll who had not paid their taxes, of whom 56,000 did not receive the communications at the address to which the communications had been addressed.

Specification No. 16

It is charged that in Pittsburgh the tax receipts for occupation taxes were purchased and issued to persons not entitled to receive

them, which tax receipts were universally distributed throughout the city of Pittsburgh for the purpose of securing illegal registration and qualification of voters.

Specification No. 17

It is charged that illegal purchase of tax receipts, amounting to many thousands, was carried out with the consent and cooperation of the Allegheny Republican County Committee.

These two specifications are so closely related that they may be discussed together.

There is no competent evidence in the record to show that any occupation-tax receipt was illegally issued by the treasurer of Allegheny County, or by any other person legally authorized to issue occupation-tax receipts, in that there is no evidence introduced showing that the persons to whom receipts were issued did not either pay the money themselves personally or for which an order from these persons was not delivered to the receiver of taxes.

Evidence was introduced tending to show that certain occupation-tax receipts were in some way issued in the year 1927—58 in number—in the name of certain people living at a boarding house called "The Athalia Daly Home of Pittsburgh."

It is contended that these receipts were illegally issued, but the testimony of the tax-receiving officials was that these very receipts were issued upon orders furnished to the tax-receiving office; but one witness stated that these orders were all in the handwriting of one person. No one of such tax receipts was ever used for any purpose. They were delivered to the committee upon the taking of testimony and now rest in the committee's file. These receipts, as a matter of law, are not in any way pertinent to the committee's inquiry.

There is no evidence in the record tending to show the issuance of any illegal tax receipts in the year 1926 unless it be the testimony of Justus Schroedel, who stated that he lived in the twenty-fourth ward in Pittsburgh.

Schroedel, in substance, stated that he guessed that he did make a distribution of tax receipts and that he got tax receipts through headquarters to the extent of 25 or 30 at a time, but on written orders.

The testimony of Schroedel is somewhat indefinite and uncertain. He stated that he put the names on the order blanks, presumably referring to the orders of taxpayers authorizing another person to pay the taxes, and that he delivered such order blanks to headquarters, presumably the Republican headquarters of Pittsburgh, and that afterwards he would go back and get the tax receipts; that he did this in 1926 prior to the primary election, but not afterwards, and that most of the people for whom he procured tax receipts furnished the money to pay the taxes.

He also testified that the taxpayers asked him to get their tax receipts and many of them gave him the money and that they gave him a written order to procure the tax receipt and gave him the money in most instances.

The chairman asked Schroedel the following question:

"Did you, in the year 1926, procure tax receipts for people who did not pay for them?"

Schroedel's answer was, "I can not recollect that."

There was testimony that in one district in the borough of Homestead, Allegheny County, Pa., certain occupation-tax receipts or blank receipts were in the hands of, and were being distributed by the headquarters of a certain candidate, for burgess, by the name of Connolly, prior to the local election in the year 1925.

Connolly had been a candidate for burgess that year in the Republican primary, but was defeated. Afterwards, he became an independent candidate for burgess at the election on a so-called Fair-Play Party ticket. A considerable number of these tax receipts, or blank tax receipts, which apparently were official, were found in this man's headquarters during the campaign in the year 1925. Connolly, in this local election, was in no way connected with or associated with the Republican organization. He was opposing that organization, both personally and politically, and the Republican organization was opposing Connolly's candidacy and there is no proof that any person connected with the Republican organization, or any election official of Allegheny County, had anything to do with these fraudulent tax receipts or tax blanks.

There is no evidence that any one of these receipts, which were being distributed by Connolly and his henchmen, ever became the basis of registration for any voter at any time.

Specifications 18, 19, 20, 21, 22, 23, 24, 25, and 26

These specifications all relate to the alleged unlawful report of the treasurer of the Republican county committee of Allegheny County, in that this report, required by law, does not show the persons to whom the money was finally distributed or that it was distributed to actual "watchers" and proper "messengers."

This report of Samuel J. Topley, treasurer of the committee, was filed in the office of the secretary of the Commonwealth at Harrisburg and with it also were filed receipts for all money paid out by Topley and mentioned in the report. The report shows the names of all persons to whom he paid money and the purpose of the payment, also the names of all persons from whom he received money and the amount paid by each.

It is charged that this report violates the provisions of section 4 of the act of March 5, 1906. (Election laws, par. 34, sec. 10.)

This section prohibits every candidate and every treasurer of any political party from paying, giving, or lending, or agreeing to pay, give, or lend, either directly or indirectly, any money or other valuable things for any nomination or election expenses whatever except for the purposes specified in the section.

The real complaint about the report is that it does not show on its face that the money alleged to have been paid for watchers and messengers was actually paid to the individual watchers and messengers themselves instead of one person who was to distribute the money to such people, and further, that there were more watchers paid in fact than the law permits and that nowhere do the names of the watchers or messengers paid appear in the report.

The fact is that these specifications do not in any way relate to the acts or activities of any officer or agent of the registration commis-

sion or any election officer in Allegheny County nor charge that any of this money was used for the purpose of corrupting any election officer or officers or agents of the registration commission .

If the report of Topley as treasurer of the committee does not conform to the law, that is his own personal affair and he is answerable for his violation of law upon an indictment or information, but, even if Topley was proven guilty of the charges made against him, without showing that these moneys were used or that some of them were used for the purpose of corrupting the voters or election officers of Allegheny County, the whole matter becomes utterly irrelevant to the issues in this contest; but there is no evidence in the record tending to show that any of this money was intended to be used or, in fact, was used for the corruption of any voter or election officer whatever.

Specification No. 27

In this it is charged that in a large number of election districts names of persons were placed upon the registration book who did not live in that particular district in which their names appeared.

There was no evidence introduced to support this charge.

Specification No. 28

In this it is charged that in a large number of election districts votes were cast in excess of the number of names entered on the voters' list.

The records show that this is true as to 38 districts. In eight of these districts, however, no lists of voters were found. In 23 districts there were found the same number of names checked as voting as there were found ballots; leaving 7 districts in which the ballots exceeded both the names on the voters lists and the names checked as voting on the registration books. These districts were as follows: Ward 2, districts 4 and 5; ward 3, districts 2 and 14; ward 4, district 33; ward 9, district 20; and ward 27, district 22.

In view of the fact that marked ballots found with the unused ballots and stubs and having the words "Void" or "Spoiled" written on them were taken out and counted by the contesting parties themselves under their agreement and without a record having been made to that effect, it is impossible to say from the record whether there were seven such districts or none. The number of ballots, however, is only 12.

Specification No. 29

In this specification it is charged that in a large number of election districts more ballots were cast than voters listed. The records show that this may be true as to six districts, as follows: Ward 2, districts 4 and 5; ward 3, district 2; ward 4, district 33; ward 5, district 2; ward 9, district 20.

These districts are part of the same complained of in specification 28 and, as has been noted in that case, the void or spoiled ballots were taken out and counted by the contesting parties themselves under their agreement and without a record having been made to that effect, it is impossible to say from the record whether there were six such districts or none.

Specification No. 30

In this it is charged that in a large number of election districts more names were entered on the voters list than there were ballots cast in the respective divisions.

In the recount of the ballots by the committee it is found that this condition was shown in 33 districts. In at least 11 of these 33 districts it is quite evident that some of the ballots have been lost or misplaced, as the stubs found exceeded the number of ballots and had there been a ballot found for each stub this condition would not have existed.

Again, in Pittsburgh, since there was no line of perforation between the stubs and the ballots themselves, the officers in detaching the ballots from the book of stubs frequently left these stubs in such condition that it was impracticable, if not impossible, to make an accurate count and for that reason it may be that there were stubs the ballots from which had been lost, for each and every name on all lists of voters. Leaving this view of the question out of consideration there would remain 22 districts, in 14 of which the difference between the ballots and names on the voters' list is 1; one in which the difference is 4; two in which the difference is 3; four in which the difference is 2; or a total discrepancy in ballots of 23.

Specification No. 31

In this specification it is charged that in a number of election districts many names were erased and altered on the voters' list.

An examination of the voters' lists discloses that erasures were made; that is, a name erased and the spelling changed or another substituted or the name entirely omitted. In many instances, however, where an erasure was found in one voters' list no corresponding erasure or change is found in the other voters' list. No evidence was offered to show that these erasures were not, in fact, made merely for the purpose of correcting errors in spelling or some other particular.

Specification No. 32

Charges that ballots containing identical tears, showing that they were torn from stubs at the same time, contrary to law, were found in many election districts.

In Pittsburgh there were no ballots protested and withdrawn on that account, nor was there any other evidence introduced to substantiate this charge.

Specifications Nos. 33, 34, and 35

Charged that the oaths of certain election officers were not attested as required by law; 47 districts in which the judge's oath was not attested; 51 in which one or more of the inspectors' oaths were not attested; and 57 in which the oath of one or more of the clerks was not attested.

The records in 46 districts show that the oaths of one or more election officers were not attested.

This lack of having oaths attested is discussed under specifications 26, 27, and 28 for Philadelphia, and is not taken up again at this point.

Specification No. 36

Is identical with specification 10 and has already been discussed.

Specification No. 37

Is identical with specification 11 and has already been discussed.

Specification No. 38

Charges that the existence of widespread fraud throughout the city of Pittsburgh, coupled with the control of the issue of ballots, the election machinery, the issue of tax receipts, and other duties connected with the election by the Republican organization of the county of Allegheny and the further fact that the contestant, William B. Wilson, made substantial gains in the recount in each of the 28 wards is conclusive evidence of a conspiracy to defeat your contestant, William B. Wilson, and secure the election of the contestee, William S. Vare.

This charge is a summary of all the charges, 1 to 37, inclusive, for Pittsburgh. No evidence has been introduced to show that any tax receipt was illegally issued, and no evidence was introduced tending to show illegal registration.

There are two witnesses, however, by whom it is shown tax receipts were obtained by persons who had no legal right to them; but there is nothing in the record to show that any of the receipts so illegally obtained were used for the purpose of registration, or that any person, who may have obtained such receipts, voted.

There were three districts within the city of Pittsburgh in which a total of four names were found in the list of voters that could not be identified with any name registered.

It was found that in seven districts there were more ballots than names either listed on the list of voters or checked as voting in the check list. In six of these seven districts more ballots were found than were names registered.

In addition there was shown by the oral testimony that election frauds had been committed in the third ward, twenty-second district, and fourth ward, second district, the election officers having been convicted of such fraud.

In the city of Pittsburgh there was found, after the recount had been completed on the protested ballots reconsidered by the representatives of the contestant and contestee, that Wilson had gained 958 votes, and that Vare had lost 1,246, distributed in districts as follows: 22 districts where both gained; 226 districts where Wilson gained and Vare lost; 44 districts where Wilson gained and Vare unchanged; 59 where Vare lost with Wilson unchanged; 170 where no loss or gain for either party; 52 where Wilson lost and Vare gained; 34 where Vare gained and Wilson unchanged; 43 where Wilson lost and Vare unchanged, and 35 where both lost.

The district attorney of the city of Pittsburgh, testified that he had gone into the subject of election frauds for the election of

November 2, 1926, very thoroughly, that he had investigated every district in which frauds were charged, or in which it had been intimated that frauds might be found, that after these investigations by him the question of frauds in this election was submitted to the grand jury in 15 districts, that in their work the grand jury examined 700 or more witnesses, but found evidence sufficient to warrant an indictment in 7 districts, 4 of which lay outside of the city of Pittsburgh, and there was an acquittal as to 1 of the 3 found in the city.

As noted in the last specifications in Philadelphia and Pittsburgh, there were 53 districts in Philadelphia in which fraud may have occurred, and 31 districts in Pittsburgh in which fraud may also have occurred.

The districts in Philadelphia are :

| Ward | District | Ward | District |
|--------------------|--------------------------------------|--------------------|---|
| First..... | Fifth. | Twenty-seventh.... | Ninth. |
| Second..... | Ninth. | Twenty-eighth.... | Eighteenth and thirty-second. |
| Third..... | Eleventh, fifteenth, and eighteenth. | Twenty-ninth..... | First. |
| Fourth..... | Sixteenth. | Thirty-third..... | Do. |
| Fifth..... | Eighth. | Thirty-sixth..... | Second and fifth. |
| Seventh..... | Twelfth and twenty-seventh. | Thirty-ninth..... | Sixth, eighth, twelfth, twenty-second, twenty-eighth, thirty-second, thirty-fourth, and thirty-sixth. |
| Eighth..... | Eighth. | | |
| Ninth..... | Do. | | |
| Tenth..... | Ninth. | | |
| Twelfth..... | Third. | Fortieth..... | Fortieth. |
| Seventeenth..... | Thirteenth. | Forty-first..... | Fourth. |
| Eighteenth..... | Fifteenth and eighteenth. | Forty-third..... | Eleventh. |
| Twentieth..... | Sixteenth. | Forty-fourth..... | Fourth, fourteenth, and thirty-fourth. |
| Twenty-first..... | Fifteenth and twenty-seventh. | Forty-fifth..... | Fifth, sixth, sixteenth, and twenty-second. |
| Twenty-second..... | Fifty-eighth. | Forty-sixth..... | Fifty-second. |
| Twenty-fourth..... | Fortieth. | Forty-seventh..... | Second and twenty-fifth. |
| Twenty-fifth..... | Twelfth and twenty-seventh. | Forty-eighth..... | Eleventh. |
| Twenty-sixth..... | Eighteenth. | | |

The districts in Pittsburgh are—

| Ward: | District |
|---------------------|---|
| Second..... | Fourth, fifth. |
| Third..... | Second, fourteenth, fifteenth, twenty-second. |
| Fourth..... | Second, third, thirty-third. |
| Ninth..... | Twentieth. |
| Fourteenth..... | Twenty-eighth. |
| Twentieth..... | Twenty-fifth. |
| Twenty-seventh..... | Twenty-second. |

And in all, 18 districts of the twenty-fourth ward.

In 20 of the 53 districts of Philadelphia the only thing tending to show fraud was that there was one or more names duplicated in the list of voters which were not identified with names registered and checked as voting in the check list.

In five of the districts there were names written in the list of voters, as well as names duplicated which were not identified with names registered in the registration books.

In five of the districts the only thing out of regular order was that more ballots were found than there were names in either list of voters or checked as voting.

In two districts indictments were found in the courts of Pennsylvania charging the writing of names unlawfully in the list of voters for the purpose of concealing unlawful deposit of ballots, but in the trial of the cases there was an acquittal in each instance.

In one district an indictment was found of fraudulently entering names in the registration book. There was an acquittal also in this case.

In one district indictments were found charging fraudulent registration and unlawful voting, and convictions were had in both cases.

In one district indictments were found charging false returns of votes at the election. There was a conviction in this case.

In one district there was an indictment found charging receiving votes of persons not entitled to vote and willful fraud in writing names in the list of voters for the purpose of concealing the deposit of fraudulent ballots. In this district there were found, as shown by the record, duplicated names in the list of voters which the examiners were unable to identify with names registered.

In one district there was found a name or names which the examiners were unable to identify in the registration book, and in this district there were also found more ballots than there were names, either checked as voting or on the list of voters.

In one district there were more ballots than there were names checked on registration book.

In one district there were more ballots than were found names checked as voting in the registration book or names on list of voters. The ballots were also in excess of the names on the registration book.

There was one district in which a witness testified that he had received a tax receipt without paying for it and had registered on this receipt, and there was also a district in which the tax collector said that he had issued receipts without payment to enable persons to register.

Of the 31 districts in Pittsburgh above referred to, 18 districts are those wherein a ward leader by the name of Schroedel testified that upon request of different persons within his ward (twenty-fourth) that he obtain tax receipts for them; he did so sometimes upon their written order, and sometimes he signed the names to the orders for such receipts which he left at his headquarters, and which receipts were obtained through these orders by some person or persons not named by him which he afterwards got at headquarters and delivered to the persons requesting him to obtain receipts for them; that most of the time the person so making the request gave him the money for such purpose.

In these 18 districts it is suggested that while some of these receipts may have been obtained illegally they were in no case issued illegally nor was the registration upon them illegal, and that while these ballots, if any, though illegally cast were void, they would not justify the throwing out of the entire districts in which they may have been cast.

There were seven districts in which there were found more ballots than there were names entered on the voters' list and in six of which there were more ballots than there were voters listed in the registration books. This would indicate fraud were it not for the fact that in the count are included ballots marked "void" or "spoiled," these ballots having been counted by agreement between the representatives of the contestant and contestee without a record having been made of the same in all instances.

There were three districts wherein there were names on the list of voters which were not identified with names on the registration

books. The entire number of names in the three districts in such condition amounted to four.

In two districts there were indictments found by the grand jury of Allegheny County and upon which indictments the election officers were convicted. The convictions were had for conspiracy to make a false count and false return; for conspiracy in willfully failing to perform their duties as election officers and for willfully performing their duties as election officers in such a way as to hinder the objects of the law governing elections; for willfully failing to perform their duties as election officers and for negligently and willfully performing their duties as election officers in such a way as to hinder the objects of the law governing elections; and in one of these districts one man was convicted of voting illegally; in one district an indictment was found against an alderman for failing and refusing to receive and failing to safely keep the ballot box. This last indictment was nolle prossed.

In connection with the grand jury reports, testimony was taken of the district attorney for Allegheny County. He stated:

The investigation included many election districts. I would be unable to say now, without checking up the records how many election districts we did investigate. Anything that looked at all suspicious on the face of the returns. I sent for the ballot box and had it brought in, and summoned witnesses and made a thorough investigation together with the grand jury. We counted the ballots and checked up on the return sheets and things of that kind.

Mr. Gardner, the district attorney, said that he investigated anything that looked at all suspicious. In another place, in reply to a question of one of the attorneys (Mr. Kelly), Mr. Gardner said:

We combed it out very thoroughly. I do not say we investigated every election district in the county, but in the office where anyone suggested to me that we should haul the ballot box in we made an investigation.

Mr. Gardner further testified that he could not be sure that all cases where he made an investigation were brought before the grand jury. In all Mr. Gardner testifies that there were 700 or more witnesses examined by the grand jury.

The grand jury in its presentment brought in indictments in three districts in the city of Pittsburgh and indictments in the four districts of the second ward in the borough of Homestead. This presentment does not state the number of districts investigated within the city of Pittsburgh, but does say that upward of 700 witnesses appeared before them and investigations were had, and that in other districts investigated and not specifically mentioned in the report, being districts in the first, third, fourth, fifth, and sixth wards of the city of Pittsburgh, there was no fraud uncovered.

Attention is called to the fact that ballot boxes from the districts in which an investigation was had, either by the grand jury or by the district attorney, were opened and ballots counted, which may or may not account, perhaps, for the shortage of ballots as compared with names entered on the voters' list, as charged in specification No. 30 for the city of Pittsburgh.

The total number of ballots affected by these 31 districts and as shown by the recount is 3,689, of which 531 were counted for Wilson and 3,158 for Vare, so that all the ballots affected, both in Philadelphia and Pittsburgh, amount to 20,086, of which 2,158 were claimed by Wilson and 17,928 by Vare.

A majority of your committee further respectfully reports that the errors and irregularities appearing upon the record made in this case concerning the election in Philadelphia which have been found of importance enough to be considered are as follows:

1. Where it has been charged that ballot boxes were returned to the city hall at an hour too early after the closing of the polls to permit the ballots to have been counted.

2. Where it is charged specifically that there were illegal payments of the poll taxes or witnesses have testified to that effect.

3. Where alphabetical listing of names was charged in the lists of voters.

4. Where the ballots found exceeded the names registered.

5. Where the ballots found equal 100 per cent of the names registered.

6. Where election officers were registrars.

7. Where election officers were not registered.

8. Where names on the lists of voters were not identified with names on the registration book.

9. Where indictments were found in connection with the general election whether convictions were had or not.

10. Where Wilson received no votes either by the returns or by the recount.

11. Where there was a difference between the recount and the returns of 20 or more in a voting district.

12. Where there was a difference found between the ballots ordered delivered at the polling places and those accounted for on the recount by counting the stubs and unused ballots.

13. Where the oaths were signed and not attested.

14. Where the oaths were signed and only a part of them attested.

15. Where one or more of the oaths were missing.

16. Where one or more of the oaths were not signed.

It was found that there were 601 voting districts free from any of these irregularities, in which Wilson received 33,171 votes by the recount and Vare received 107,106 votes, or a plurality for Vare of 73,935.

It was found on the recount that in 337 other voting districts no one of the above-specified irregularities was found, except that the oaths of the election officers, while signed by such officers, were not attested. In these 337 districts Wilson received 15,841 votes and Vare received 63,159 votes, or a plurality for Vare of 47,318.

There were 29 voting districts wherein it was found on the recount that there was a gain or loss of 20 or more votes over the returns and in which no other irregularity was found. In these 29 districts Wilson received 2,571 votes and Vare received 5,928 votes, or a plurality for Vare of 3,357.

On the recount there were 24 voting districts in which the oaths were either missing or part of them were not signed, or none of them signed, in which districts no other irregularity appeared. In these 24 districts Wilson received 911 votes and Vare received 4,983 votes, or a plurality for Vare of 4,032.

On the recount there were found 49 voting districts in which one or more of the election officers were registrars, there being no other irregularity in these districts. In these 49 districts Wilson received

2,891 votes and Vare received 8,351 votes, or a plurality for Vare of 5,460.

On the recount it was found that there were 23 voting districts where one or more of the election officers was not a registered voter and no other irregularity was found in these districts. In these 23 districts Wilson received 1,636 votes and Vare received 3,800, or a plurality for Vare of 2,170.

On the recount there were 56 voting districts in which it was found that there were more or less ballots than were ordered sent to the polling places, this being the only irregularity in these districts. In these districts Wilson received 3,484 votes and Vare received 10,682 votes, or a plurality for Vare of 7,198.

There were found 11 voting districts wherein Wilson received no votes on the general returns. On the recount in 9 of these districts Wilson had no votes, but in the other 2 Wilson was found on the recount to have received a total of 3 votes and Vare received 2,223 votes in all the 11 districts, or a plurality for Vare of 2,220, the foregoing being the only irregularity in these districts.

On the recount there were found 3 districts in which the ballots found equal 100 per cent of the registration. In these districts Wilson received 9 votes and Vare received 218 votes, or a plurality for Vare of 209, the foregoing being the only irregularity in these districts.

There were found on the recount 48 districts where it was charged that the ballot boxes were delivered at City Hall too soon to permit them to have been counted, this being the only irregularity charged to exist in connection with these districts. In these districts Wilson received 2,904 votes and Vare received 14,888 votes, or a plurality for Vare of 11,984.

There were 23 districts in which it is charged that there were illegal payment of poll taxes, this being the only irregularity charged to exist in connection with these districts. In these districts on the recount Wilson received 861 votes and Vare received 5,450 votes, or a plurality for Vare of 4,589.

On the recount two districts were found where more ballots were discovered than there were persons registered, this being the only irregularity found in these districts. In these districts Wilson received 23 votes and Vare 396 votes, or a plurality for Vare of 373.

There was one district in which indictments were found against one or more of the election officers, but where, upon trial, the verdict of not guilty was rendered, this being the only irregularity in connection with that district. In this district Wilson received 18 votes and Vare 193 votes, or a plurality for Vare of 175.

Upon the recount there were found 13 districts where it was charged that names on the list of voters were not identified with the names on the registration book. The total number of these names is six. This was the only irregularity found in these districts. In these districts Wilson received 409 votes and Vare 2,716 votes, or a plurality for Vare of 2,307.

There were 216 districts found in which a combination of 2, and no more of the above irregularities were found.

There were 37 voting districts in which a combination of 3, and no more, of the above irregularities were found.

There were 11 voting districts in which a combination of 4, and no more, of the above irregularities were found.

There were two voting districts in which a combination of five, and no more, of the above irregularities were found.

There was one voting district in which a combination of six, and no more, of the above irregularities were found.

In the event that all of the voting districts in Allegheny County, challenged by the contestant, Wilson, in his pleadings, are thrown out and disregarded absolutely, leaving the unchallenged voting districts in Allegheny County standing as shown by the general returns and the 337 voting districts in Philadelphia, where no irregularity appeared except that the oaths of some of the election officers were not attested, are not thrown out but retained in the count and the 601 districts in Philadelphia, where none of the foregoing irregularities appear, are not thrown out but retained in the final count, then Mr. Vare has a plurality of legal votes over and above Mr. Wilson of 19,049.

A majority of your committee, therefore, concludes and reports that William B. Wilson has not sustained the allegations set forth in his amended statement of contest, as amended, was not elected by legal votes cast on the 2d day of November, 1926, in the State of Pennsylvania, and is not entitled to a seat in the United States Senate from the State of Pennsylvania; and

Further, your committee concludes and reports that William S. Vare did receive a plurality of the legal votes cast at the general election held on November 2, 1926, for the office of United States Senator from the State of Pennsylvania.

The committee, after full hearing of both the contesting parties upon the application of contestee Vare for the opening of the ballot boxes in 31 counties specified in his petition and the examination thereof and the election records pertaining thereto, unanimously denied said application and petition.

SUPPLEMENTAL REPORT

We, the undersigned, members of the Committee on Privileges and Elections, to whom was referred the contest instituted by the Hon. William B. Wilson against the Hon. William S. Vare, involving the office of United States Senator from the State of Pennsylvania, submit the following supplemental report:

Without approving all of the statements of fact contained in the report of the majority, we concur in the conclusion of the majority in so far as it determines that the contestant, Wilson, has failed to show affirmatively that he received a plurality of the legally qualified votes cast for Senator in the election of November 2, 1926, in the State of Pennsylvania, and therefore is not entitled to the seat in question.

We dissent from the conclusion of the majority that the contestee, Vare, received a plurality of the legal votes cast in said election, and in legal consequence, therefore, is entitled to said seat; because it appears from the evidence taken by the special committee of the Senate and made available for use and consideration by this committee under the provisions of Senate Resolution 68, together with the evidence submitted to this committee in the hearing of said cause, that on account of the excessive expenditure of money in the primary held in said State preceding the election in question, the expenditure of money in the election itself, and fraud committed by the contestee or by others in his behalf, the contestee's title to said office is tainted with fraud.

We conclude, therefore, that the contestee is not entitled to a seat in the Senate as a Senator from the State of Pennsylvania.

WALTER F. GEORGE.
T. H. CARAWAY.
SAM G. BRATTON.
TOM CONNALLY.