

9  
Mr. CASSEL. We were satisfied, and supposed the majority of the committee would be.

Mr. SHIRAS. I am simply asking for fair play in this matter. I say that unless you show whose votes those 200 were, they ought not to be thrown out. It seems to me this is only ordinary fair play.

Mr. DRISCOLL. Will the gentleman allow me to ask one more question—that is all?

Mr. SHIRAS. Certainly.  
Mr. DRISCOLL. If those three districts—the Second and Third wards of Winton and the first district of Old Forge—are thrown out, how does that leave the vote?

Mr. SHIRAS. It leaves the vote 8 in favor of Mr. Howell.  
Mr. DRISCOLL. Now, is it not true that Mr. Howell did not try to prove aliunde any of the votes cast for him or any of the illegal votes alleged to have been cast for Mr. Connell? That is true, is it not?

Mr. SHIRAS. I will make a practical answer to that question in this way: It was competent, perhaps, for Mr. Howell to prove by aliunde testimony the whole 2,000 votes, and it would have cost him \$10,000 or \$15,000. That sort of proceeding on the other side cost the contestant probably \$50,000. Such a contest of "aliunde-ism" would be a farce, and the prize would go to the biggest purse.

Mr. DRISCOLL. If you have read the evidence, have you any doubt that at least, we will say, 10 illegal votes, because that number would be sufficient, were shown by evidence aliunde but competent to have been cast for Mr. Howell? Have you any doubt about that?

Mr. SHIRAS. I did not quite catch the purport of the gentleman's question.

Mr. DRISCOLL. Is there not aliunde evidence sufficient to show that at least 10 of these illegal votes were cast for Mr. Howell?

Mr. SHIRAS. I do not think so, upon the evidence.  
Mr. DRISCOLL. Have you examined it?

Mr. SHIRAS. I have examined the testimony on which the supporters of the contestant rely.

Mr. DRISCOLL. You have not read it fully; you have not read the whole of it.

Mr. SHIRAS. But you have not identified the voters. That is the reason I say that this evidence should have been barred out.

Mr. FOSTER of Illinois. Has the gentleman any doubt that at least 20 of those votes were cast for Mr. Howell?

Mr. SHIRAS. Not the least.

Now, I want to call attention to another point. In these disputed districts only 32 votes have been proved for Mr. Connell, where 172 are returned. Were the rest of the votes returned for Mr. Connell legal or illegal? Unless this question is determined, it seems to me you have not proved anything. The danger that arises in a case of this kind is clearly shown in respect to these 200 votes.

Now, Mr. Speaker, I have taken more time than I expected. This is simply a question of asking for fair play. I do not believe it right to delegate our consciences in a close case like this to the committee and allow them to determine the whole question of law and of fact. I have no hesitation in coming to the conclusion that it is unfair to the sitting Member, unfair to the Tenth Congressional district, unfair to the State of Pennsylvania, and unfair to the Republican party to unseat Mr. Howell. [Loud applause.]

record a little appalled at the amount of work that the committee thought was before it, and when Mr. Balentine, representing the contestee, arose to talk I inquired of him whether or not certain admissions could not be agreed upon by counsel, so as to shorten the labor of the committee, calling his attention directly to the claim of the contestant to the great number of votes in these three wards cast by men whose names were not on the registration list. That was at the beginning of the hearing, and he said that the figures presented by the attorney for the contestant were inaccurate in this regard.

I forget what the exact figures were with reference to the Second Ward of Winton, but it was something like 88 votes that the contestant claimed had been cast in this way, the names of those who cast them not appearing upon the registry list. Mr. Balentine said that there were 50 in that ward, that the balance of the 88 names on that list were not names that did not appear on the registry list, but that they were substitutions.

Now I want to call the attention of the House to what substitutions meant under all the circumstances of this case. The way in which this election was conducted in these three precincts—and the method was the same throughout this whole day of iniquity in those three precincts—was this: They permitted everybody to vote. The evidence is abundant and uncontradicted upon that subject. Men came in during the early part of that day, and their names were written down on the poll book, whatever name a man gave being put down.

In Old Forge the first two names of the men who voted on that day were names that did not appear upon the registry list. Early in the day they started in that way, but as the day progressed it occurred to some one in that conspiracy that that was not a slick manner of doing this thing.

Toward the close of the day the method had changed. In place of writing new names that did not appear upon the registry list upon the poll books they picked out names on the registry list, and they had the voter vote in lieu of some man who was dead or some one who had moved out of that district. These facts are sustained by the record. There is no room for question. In substituting the names of voters who presented themselves first, for names appearing on the registry list, it chanced in a great many cases that the election officers and those doing this iniquitous act had some man vote in lieu of a man who was not then present, but the man himself coming in and voting afterwards under the same name. Proof is abundant in this record of the witnesses who testified that they voted but once, whose names appear twice. Mr. Holgate, the attorney for contestant, put in this list of names a great number of names of men whose names appeared in that way.

Now, the argument arose early, and it was fiercely contested before our committee as to what was the probative effect of these two different kinds of illegal votes. The contention upon one side was that where a man's name did not appear at all upon the registry list that was an evidence of fraud that could not be explained—that it demonstrated corruption and fraud. Upon the other side it was said that where a man simply came in and substituted or voted as a substitute for some one whose name was upon the registry list, while the vote would be illegal just the same—there was no contention about that and no denial of it—yet there was a contention that it did not tend to show corruption upon the part of the judges themselves, and that was the issue that we were trying before that committee. I want Members to remember that. So they separated these illegal votes into two classes, of that argument, in the way I

## The Roll Call And The Aftermath

A few moments after Mr. Lanning and myself, on the Republican side, had concluded our remarks the speaker directed that the roll be called on the motion to award the seat to the contestant, Mr. Connell.

As the members voted, it soon became apparent that the large Republican majority would be greatly reduced or wiped out.

those districts? Did he not have the same opportunity to prove them if he wanted to?

Mr. SHIRAS. Now, gentlemen, I am trying to talk about the equities in this case.

Mr. NORRIS. May I ask the gentleman a question?

Mr. SHIRAS. Certainly.

Mr. NORRIS. In your judgment, was the committee justified in throwing out the three precincts? Do you agree with them in that?

Mr. SHIRAS. I do not agree with them on that point. I do not criticize them very harshly, but I do not agree with them. What I think they ought to have done is, having found about 125 irregular votes, some technically irregular and some absolutely fraudulent, they should have deducted those votes, even if they deducted them all from Howell. That would have been bad enough, but to throw them all out was unfair, in my judgment.

Mr. CASSEL. In the report of the Second Ward of Winton, 184 votes were cast for Howell and 178 votes were declared and proved fraudulent.

Mr. SHIRAS. Who found them fraudulent?

Mr. CASSEL. They were shown to be fraudulent by the evidence.

Mr. SHIRAS. Now, we find the case stands in this way. That when they took the disputed districts this great number of votes, amounting to nearly 800, were thrown out of the three precincts, making a unanimous vote for Connell of 32 to nothing. That, if sustained, would elect Connell by 24 majority. Now, that does not look like much of a plurality to come into the House with, with thousands of pages of testimony at an expense of thousands of dollars, showing only a plurality of 24. Well, what does the committee do? They had a taste of "aliundeism," and they then did what, to my mind, is the one illegal proposition that bars out most of this testimony. The testimony was taken showing that 1,700 illegal votes were cast; yes, upward of 2,000. If I am incorrect I wish the chairman would correct me—

Mr. DRISCOLL. Two thousand and two.

Mr. SHIRAS. Two thousand and two; and when the committee came to consider these votes they were of the opinion that there were a number of fraudulent votes, and under aliunde proof they attempted to show that a great number had been cast for Mr. Howell, and thousands and thousands of pages of testimony were taken upon that branch of the case. I do not say it was wrong to take the testimony upon that point, but I say that when the committee came to make the report they really barred out the testimony and have prevented its consideration by the House. They found, I repeat, that there were 1,700 illegal votes; and what did they do? They file a report in which they say that "at least 200 votes"—that is the language of the report—"at least 200" of these votes were cast for Howell.

When they came to make the report, you find that in round numbers they deduct 200 from Howell. Let me show you what that means. Upon an investigation of the attitude of the members of the committee we find that they can not tell who the various parties were, what their names were, or where they were located. Is this not most extraordinary? In my mind it is the turning point in this case. Not only we as Republicans can not know, but the opposition are powerless to pass upon the two questions that arise in each of these 200 cases: Was the vote illegal, and was it cast for Mr. Howell? It is the introduction of this bad precedent that arouses in the main my opposition.

Thus, having agreed that there were 1,700 illegal votes, and believing that "at least 200" of them were cast for Mr. Howell, they promptly charge them up and take from his count 200 votes that are not identified by name or voting precinct.

Mr. KENNEDY. Why, they were passed upon by the majority of the committee.

Mr. SHIRAS. I would like to ask the gentleman a question. Does the gentleman mean to say that his committee passed upon these 200 votes and has got them entered on the record, in the minutes, as 200 voters from certain precincts? And by a vote of the committee determined that they were illegal?

Mr. KENNEDY. The committee passed upon 200. In my judgment there are a thousand.

Mr. SHIRAS. Now, I want to ask the gentleman how he passed on those 200. Where are they? What are their names? Why does the committee not have them in its report?

Mr. KENNEDY. I did not draw the report.

Mr. RANDELL of Texas. The committee did not pass on the 200.

Mr. SHIRAS. I am not saying there were not 200 illegal votes there. I am not saying that they ought not to be deducted, if you can prove them, but I say you have to do it in a legal way. Let me say to the members of the majority of this committee that when they had a vote that they wanted to deduct from Mr. Howell's count, one of the gentlemen should have said, "Mr. Chairman, I move you that the vote of John Smith, illegal by

false registration or nonpayment of taxes, which vote the evidence shows has been cast for Mr. Howell, shall be deducted from his count." That should have been put to a vote of the entire committee, and if the committee affirmatively by its majority struck that out, the Republicans and Democrats voting upon it, then that vote should have been taken from the count of Mr. Howell.

But what have you done? You have simply come to the conclusion—all of you, as individuals—that there were "at least 200" illegal votes out of 1,700 that were cast for Mr. Howell, and you have deducted them without identifying them by the name of the voter or voting precinct, a thing I never heard of, even in the "solid South." Now, unless the members of this committee can deny what I say here—that they have taken 200 votes that they can not identify—it seems to me that it shows the dangerous character of the aliunde evidence, and it is upon that that this gentleman [pointing] relies for obtaining his seat.

Mr. CASSEL. Mr. Speaker, let me answer that just here. First, the members of the minority say that these questions were not discussed by the majority who signed this report. The majority report was signed by the majority members of this committee, and it was not submitted to the minority. We passed a resolution by vote of the committee stating that we thought that Mr. Connell was entitled to his seat. The majority then prepared this report and signed it.

Mr. SHIRAS. Let me ask the gentleman a question—

Mr. JOHNSON. Mr. Speaker, will the gentleman let me make a statement right here? I do not want to take any of his time.

Mr. SHIRAS. I will yield to the gentleman.

Mr. JOHNSON. The majority of the committee furnished the minority of the committee the names of the thirty-two voters whose testimony was established by aliunde evidence. We are able to examine them and see for ourselves whether there is anything upon which to base it. They do not furnish us any of the list of the 200 men that they say illegally voted for Mr. Howell, and we can not examine that, and the House can not.

Mr. DRISCOLL. Mr. Speaker, I would like to ask right here the gentleman from South Carolina a question. Is it true that the majority furnished the minority those thirty-two names? Is it not true that I asked one member to furnish the names that he had examined to the rest of us, and also to the members of the minority?

Mr. JOHNSON. May I make another statement?

Mr. SHIRAS. Mr. Speaker, I have not yielded to the gentleman from New York [Mr. DRISCOLL].

Mr. JOHNSON. May I answer the gentleman's question?

The SPEAKER. Does the gentleman yield?

Mr. SHIRAS. Yes; I will yield to the gentleman from South Carolina.

Mr. JOHNSON. The majority of the committee divided up this work. That is the reason they do not know any more about it. One man examined one part of the record and another man another. I examined all of it. That is the difference. [Laughter.] One member of the committee who made up the list of the 32 aliunde votes handed that list to the ranking member of the minority of the committee, and the majority of the committee adopted his work.

Mr. FOSTER of Illinois. Let me ask this question. Is there any evidence in the record showing that the 200 votes thus thrown out were cast for Mr. Howell?

Mr. JOHNSON. We do not know whose votes those 200 were; the names are not given.

Mr. SHIRAS. Now, I should like to make this reply to the gentleman from Pennsylvania [Mr. CASSEL]. He having admitted that he and his five colleagues on the committee passed upon these 200 votes; suppose that on the question of charging up those votes for Mr. Howell or taking them away from him there had been a division among those six members of the committee; suppose the vote had been 4 to 2, then, if the Democratic members had come in and voted on that question, that vote would not have been thrown out.

In other words, there was only a majority of a majority voting upon that question of striking out these votes. The result is that the committee itself does not know what those 200 votes represent. They could not agree and have not agreed on that point. Those votes are simply floating in the air, without name or habitation. No one can identify those voters. No member of the committee or anyone else can do so.

Mr. CASSEL. I believe that I speak truthfully when I say that at least four of the six members of the majority of the committee, after having gone over the testimony in the case name by name and man by man, comparing the testimony of one side and on the other, were in favor of putting into this report anywhere from 500 to 1,000 of those people.

Mr. SHIRAS. It would not have been any worse if you had done so.

They are also to be credited with the fact that they had to deal with one of the most difficult cases in point of extent of testimony and number of witnesses of any case that has been presented here for years.

Now, I do not question their sincerity; and, under ordinary circumstances, I take it, it is the duty of Members of this House to follow the suggestions and recommendations made by the majority of the committee that has examined a case of this kind. While, therefore, I do not question the sincerity of my fellow-members who wrote this majority report, neither do I question very seriously their judgment up to a certain point. When you come to examine the majority report down to a certain point, it will be found ~~substantially~~ substantially right, but when they become impregnated with the germs of "aliundeism" they seem to act, as it appears to me, with utter disregard to the law that should control in a case of this kind.

In a few moments I shall refer briefly to the question of aliunde evidence; but before touching upon that point I want to say to my Republican colleagues that this is admittedly a close case from the standpoint of the majority. There are 6,500 witnesses and 2,500 pages of testimony, and doubtless thousands and tens of thousands of dollars were spent, ~~in preparing the issue for this body to consider.~~ And what was the result? The majority find a plurality of 223 votes in favor of the contestant out of a total of 28,000 votes cast in that district. They have taken the position, necessarily, that if there had been a change of 112 votes in that district Mr. Connell—the contestant—would have been defeated.

Now, gentlemen, you must remember that while that is conceded by the majority of the committee representing this side of the House, the Democrats do not concede that the result was so close. You must take the situation as it existed there; and there are equities in the case that seem to me to throw a great deal of light on the situation. In the first place, we are told that we ought to follow the majority of the committee because of the great volume of testimony taken. Now, gentlemen, let me tell you those are wooden guns piled up there. If you have listened to the debate up to the present time you must have been satisfied of the fact that the case rests upon a very few pages of testimony and several very simple propositions of law.

The testimony relied upon here is substantially quoted in the minority report. If any Member will take the two reports and go off quietly by himself for an hour and analyze this case, he will come to a conclusion without the necessity of looking into the testimony further; or if he has listened to the debate of yesterday, he must in the same way have reached a conclusion as to how he should vote.

Now, the idea of any Republican here trying to hide behind that mass of testimony, and saying, "I am unable to delve into all the depths of this case and come to a conclusion, and I can satisfy my conscience by following the lead of this committee," is, it seems to me, fallacious. Some gentlemen on this side undertake to throw the responsibility on the committee in that way. They say: "I believe the members of the committee to be honest, conscientious men. They have gone through this mass of testimony, and we can not do better, under the circumstances, than follow their conclusion."

On that point I wish your attention. The determination of this case does not require the consideration of the testimony to any great extent. The testimony upon which the issue here turns has been repeatedly read and referred to on both sides of the House.

Mr. DRISCOLL. Does the gentleman mean to say that all the material evidence has been read?

Mr. SHIRAS. All the material evidence, the evidence that you rely upon, has been mentioned, its character analyzed and presented to the House.

Mr. DRISCOLL. We could not do that in a week.

Mr. SHIRAS. When you come to consider the questions of law involved here, if you are inclined to give due weight to those questions, nine-tenths of this testimony must be ruled out absolutely.

Mr. CASSEL. Has the gentleman read the briefs of the contestant and contestee in this case?

Mr. SHIRAS. I have read the report very carefully three or four times and have consulted with practically every member of the majority of the committee except Mr. DRISCOLL, whom I tried to see several times. I say the report—

Mr. CASSEL. I am speaking of the briefs which set forth the case as presented by the two committees.

Mr. SHIRAS. As I have already said, I have not attempted to read all the testimony in the case, because I have taken the word of the majority as well as the minority of the committee that the material evidence on which they rely has been presented.

I think it can be shown that the great mass of this testimony must be ruled out, not only because it comes under the head of aliunde proof, but because this aliunde evidence can not be ap-

plied owing to the failure to connect it up with the votes thrown out; and when you come to consider the matter, therefore, it will be found that ~~four or five~~ four or five thousand pages of this testimony can not properly be considered.

Now, let us look at another feature of this case. The Tenth district of Pennsylvania in 1902 was Democratic. The Democratic candidate for governor carried it by some five or six thousand majority; and before the election every Republican who knew anything about the state of the case in that district knew that there was very little question that the Democratic Congressional candidate would carry that district, although ordinarily a Republican district.

Consequently, the Democrats knowing this, and knowing that they had more than a fighting chance, there was every reason in the world why they should put forward a representative Democrat to lead them to the victory which would surely come to them in that district when the votes were cast in 1902.

Mr. GILBERT. What were the changed conditions that led people to think it would go Democratic?

Mr. SHIRAS. There was a series of labor strikes growing out of the coal business there, and Mr. Connell was one of the leading coal operators, and it was natural under those conditions to expect reprisals.

The county of Lackawanna gave the Democratic candidate for governor between five and six thousand majority. Now, the Democrats, knowing that this was coming, saw their duty, and they therefore expected to nominate a Democratic candidate, because in that ordinarily Republican district they expected to elect their candidate.

Now, what happened? The kind friends of the contestant went into a Democratic convention, disrupted it, and, with a very small minority of the convention apparently, got the Democratic nomination. Although he is coming here to-day charging fraud against the Democracy, he received and filed a Democratic certificate of nomination in Dauphin County. Mr. Howell, who had the majority of the convention, also received a Democratic nomination, and that was filed in Dauphin County. A contest arose, and the courts of Pennsylvania decided that the nomination given to Mr. Connell was illegal and threw him off the Democratic ticket.

Mr. SWANSON. Do you mean he claimed to be the Democratic nominee?

Mr. SHIRAS. Yes.

Mr. GILBERT. What proportion of that convention voted for Mr. Connell?

Mr. OLMSTED. Will my colleague permit a question?

Mr. SHIRAS. Yes.

Mr. GILBERT. What proportion of the Democrats in that convention—

Mr. SHIRAS. I have yielded to my colleague, Mr. OLMSTED.

Mr. OLMSTED. I understood you to find fault with the Democratic convention for nominating or attempting to nominate a Republican.

Mr. GILBERT. As a Democrat.

Mr. SHIRAS. I say Mr. Connell went to a Democratic convention and was nominated.

Mr. OLMSTED. Let me ask my colleague if he himself was not nominated by a Democratic organization?

Mr. SHIRAS. Yes, and the three other Republican Congressmen in Allegheny County also received Citizens' nominations. Mr. DALZELL himself received a Citizens' nomination, although he did not receive a Democratic nomination.

Mr. OLMSTED. Did you receive Democratic support and were you elected in that way against the regular Republican nominee? Is not that the fact?

Mr. SHIRAS. That is not the fact, sir, as stated. I ran as an avowed Republican, and, as is often the case, received several party nominations.

Mr. KLUTZ. The Democrats did not vote for you, did they?

Mr. OLMSTED. A good many of them did. [Laughter.]

Mr. SHIRAS. As this matter is becoming a little personal, perhaps I had better refer briefly to the political situation in Allegheny County. We have not any Democratic party in Allegheny County practically, for they have joined in the fight for good government; we have two Republican parties there. If the Democrats had run a Democratic candidate in my district against two Republicans, he would not receive probably more than 4,000 votes out of the 30,000 votes cast.

Mr. CONNELL. To which party do you belong?

Mr. SHIRAS. When the vote was taken here I had 14,500 votes; the other Republican had about 14,500 votes, so there was but a very small difference between the two, but the vote that was cast there for me represented the untrammelled, nonoffice-holding vote in my district. I think I got practically every fair-minded, untrammelled Republican vote in that district in that particular contest. [Laughter.] I will tell you why I think so.

Mr. OLMSTED. Then there are 14,500 trammled Republicans in that district? [Laughter.]

Mr. SHIRAS. No; but there are <sup>many</sup> thousands of officeholders in that district, Federal, State, and county [laughter], and two or three thousand relatives. Now, I got few of those votes.

Mr. CASSEL. What was the majority in that district?

Mr. SHIRAS. The majority in that district was 18.

Mr. CASSEL. What has become of the parties that nominated you at that time? Have not they gone back into the Republican party?

Mr. SHIRAS. I am not going back into the pedigree of Allegheny County politics. No one can understand them, and I can not expect the gentleman to understand them.

Mr. GILBERT. There is no contest about your seat.

Mr. SHIRAS. The gentleman refers to the 18 majority as apparently indicating that I did not represent the Republicans in my district, intimating that if I did I would have had a larger majority.

Mr. OLMSTED. No; I think it simply shows that you have become one of the 5,000 officeholders. [Laughter.]

Mr. SHIRAS. You look at it from a different point of view. Now let me tell you gentlemen about that district. My Republican opponent ran on the "organization" Republican ticket, on the same ticket as Governor Pennypacker, on the so-called "straight Republican ticket." Governor Pennypacker carried the Twenty-ninth Congressional district by 20,000 majority, and my Republican opponent was not elected. Did the Democrats do that? My opponent ran 20,000 votes behind the Republican State ticket in this Congressional district. Could he have been more badly defeated?

Mr. KENNEDY. The same thing occurred over in Lackawanna, did it not?

Mr. SHIRAS. I am being diverted from what I was saying.

Mr. GILBERT. Now will the gentleman answer my question? What proportion of the Democrats in the convention in this Congressional district were in favor of the nomination of Mr. Connell as the Democratic nominee?

Mr. THAYER. Thirty-two out of 192.

Mr. SHIRAS. Now, gentlemen, you do not want to hear me on what the Democrats of Allegheny County could, would, or should have done, or my political pedigree, but it is simply a question of fact, "Who was elected?" and you can not see who has been elected, for the Committee on Elections had so limited the inquiry that not over fifteen of the witnesses whose testimony was taken is material to this issue.

Mr. SIBLEY. Let me call your attention—

Mr. SHIRAS. Let me give the reason, because I do not want to make a statement and then have to analyze it before I go on. I started to say that the result of this Democratic convention was that not only was Mr. Connell's nomination thrown off the Democratic ticket, but Mr. Howell, the admitted Democrat, who positively was a Democrat and whom the Democrats knew had a chance of election, was also thrown off the Democratic ticket.

The SPEAKER. The time of the gentleman has expired.

Mr. McLAIN. I will yield the gentleman ten minutes more if he desires it.

Mr. SHIRAS. The controversy that arose in this Democratic convention, in which the contestant desired to carry off the prize, is not material, or ought not to be, except for one phase. Everyone here who is candid will admit that if Mr. Howell had been before his district on the straight Democratic ticket, it would have given him four to five thousand Democratic majority, and he would have certainly gotten it but for the extraordinary and peculiar methods of procedure of that Democratic convention.

Therefore I say, gentlemen, the question in this controversy is as to the alleged Democratic convention, with a Republican candidate, and an actual Democratic candidate. I take it that all Republican Members here who are in favor of fair play well know that Mr. Howell got 461 majority, instead of the 4,000 or 5,000 he ordinarily would have had. It is difficult for this committee to show that all these votes were intentionally fraudulent. I take the position that in the consideration of this case there is no doubt that the committee has failed to fully understand the subsequent effect of this Democratic convention when figuring upon the majority that Howell would have had.

Mr. CASSEL. Do you mean to say that the committee, which has given two weeks' continuous work in going over this evidence and testimony, four weeks almost, commencing at 10 o'clock in the morning and continuing until 5 o'clock, and giving through their report their conclusions that they have arrived at, that they do not know more of it than you, when you say that you have not been able even to read it?

Mr. SHIRAS. I have been trying to get to the very proposition, because the bulk, perhaps, of this testimony, showing what you did, is what has led up to my general proposition, viz, whether

you have established the fact of Mr. Connell being entitled to a seat under this evidence. Now, what do you do? You find 461 plurality in favor of the Democratic candidate, and you change that to 223 in favor of the contestant. How do you do that? Up to a certain point the committee did not go astray. It showed, I think, good judgment when it took up the case of those three precincts, which they charged to have been, on their face, full of fraud. To take these up and with careful judgment proceed to determine how they would get at the fraud and what effect the fraud had on the general result.

But they did not treat it fairly. In the first place, they found 50 illegal votes of persons who had not paid their taxes, 50 illegal votes of persons who had not registered, and those, to some extent, were technically illegal votes, but instead of taking those votes out of Old Forge and the Second and Third wards of Winton, and even charging all against Mr. Howell, what did they do? They threw out the entire 797 votes, though Mr. Howell had 454 majority.

Mr. McLAIN. May the gentleman allow me to interrupt him for a moment just to say I will allow him as much time as he wants and he can proceed as he desires.

Mr. SHIRAS. Now, that, gentlemen, is the starting point of this case. Here are districts that cast 797 votes that gave Mr. Howell 625 votes and 172 to the contestant, and an admission that part of these were technically illegal ballots and not fraudulent in the worst sense. They threw out those 797 votes, and they do not show in the evidence taken in Old Forge and in the Second and Third wards of Winton that any single one—mark me—that a single one of those fraudulent votes had been cast for Mr. Howell, but, on the contrary, the only evidence of illegal votes cast was that they were cast for the contestant. Is that not correct, I ask the gentleman from New York?

Mr. SWANSON. You mean that there was no fraud on the ballot box?

Mr. SHIRAS. I say in the proof they did not attempt to prove any of those illegal votes had been cast for Mr. Howell.

Mr. SWANSON. They were simply people who voted not being properly registered.

Mr. SHIRAS. There may have been false impersonations, there may have been cases of extreme frauds, but I am not defending that; I am analyzing how they got at the question of the separate fraudulent votes or assumed illegal votes—

Mr. GILBERT. They cast that vote to Mr. Howell without any proof—

Mr. SHIRAS. They found nothing, in my judgment, which should lead to the throwing out of the entire precincts. The result of that was that Mr. Howell still had 8 majority and then they went back and by aliunde proof—here is the dangerous point in their process, by aliunde proof—they found that 32 of those 797 votes had been cast for Mr. Connell. Now, what was the result, gentlemen, of that finding? It was this: Here were three precincts with 797 votes and with the large majority of 454 for Mr. Howell which were absolutely thrown out. They destroyed this entire vote, yet found Mr. Howell elected by 8 majority. They then go back and go over the embers, you might say, of the destroyed votes and find 32 for Mr. Connell, and turn that Democratic district, which gave 454 majority for Mr. Howell, over to Mr. Connell by a unanimous vote—32 for Connell, nothing for Howell. It seems incredible.

Mr. SWANSON. Which gave that majority?

Mr. SHIRAS. Yes.

Mr. DRISCOLL. Will the gentleman yield for a question?

Mr. SHIRAS. Certainly.

Mr. DRISCOLL. Is not that the ordinary practice, that when a district or poll is thrown out for fraud, to go back and prove votes cast for both parties by evidence aliunde? Was that not done in the Fifty-fifth Congress in the case of Wise v. Young and in many other cases?

Mr. SHIRAS. I do not think it was ever done under conditions as they existed in this case.

Mr. DRISCOLL. No two conditions in elections are exactly alike, but where we throw out votes of certain districts because of fraud, the practice for both parties is to go back and prove the votes cast for their candidates aliunde.

Mr. SHIRAS. Now, I want to ask a question in return. Is it not a fact that those three districts cast 797 votes, which gave Mr. Howell a majority of 454 votes, and by throwing out those precincts it still left a majority of 8, and that the action of the committee in finding those 32 votes put the result in favor of Mr. Connell?

Mr. DRISCOLL. Why, yes, but— [Applause on the Democratic side.] Oh, there is nothing to cheer about this; we are dealing in facts here. We stated it yesterday ourselves, and it is not necessary for a Mugwump from Pennsylvania to state it over again. I simply say, is it not the invariable rule? Did not Mr. Howell have the same chance to go back and prove his votes in

141 C  
The vote was as follows: Connell 156; Howell 148,  
so that a change of four votes would have permitted the sitting  
member to retain his seat.

Before the roll call a number of Republicans  
absented themselves, while a half dozen more sat in their seats and  
merely answered "present" when their names were called. Had a  
small fraction of those who refused to vote, as evidence of their  
dissatisfaction, given their support to Mr. Howell he would not have  
been ousted.

During the confusion following the announcement  
of the result, Judge Walter I. Smith of Council Bluffs, Iowa, came  
to me and said, "I have been in Congress a number of years, but this  
is the first time I had reason to be ashamed of my vote. Had you  
opened the attack at the beginning of the proceedings, instead of  
at the end, it would have given many of us a chance to get our bear-  
ings. I had definitely pledged my vote to Mr. Connell and had not  
courage enough to shift at the last moment." There were other  
Republicans who did not feel this way, for General Grosvenor, the

2) doughty old war horse from Ohio, purposely passed my seat that he might shout out, "Some day you will regret having voted for that Democrat!" I answered that I was not voting for a Democrat but for justice.

It may be stated that my attitude in this contest was approved by practically all my constituents and the other voters in the adjoining districts. <sup>States</sup> I received assurance of a renomination by the parties that had previously supported me, while a message came from the Republican organization that <sup>through</sup> while it understood I was not a candidate for re-election, it seemed certain that if I were a candidate I would receive the support of the Republican leaders who did not wish to see me succeeded by my former opponent, <sup>W. H. Graham</sup> whose association with Governor Stone had brought him into popular disfavor. On the other hand General Grosvenor, by reason of a factional row had later been refused a renomination, and in his resentment tried to get the Democratic nomination for Congress, in which he failed, thus showing that his party fealty was only skin deep.

My two distinguished colleagues who had been elected on the 'citizens' ticket at the time I was, voted for Connell, saying to me in explanation, that they hoped to receive the regular Republican nomination next time, which might be jeopardized if they voted for a Democrat. These hopes, however, were blasted, for having become "regular" they were cast aside by the political bosses as ones no longer to be feared. I cite these instances as indicating that ~~an~~ ~~allegiance to a political party based on blind partisanship, or~~ ~~induced by~~ political timidity, does not appeal to the electorate at home.

As a sequel to this part of the narrative, it may be stated that when I declined to be a candidate, my personal friend

3

and political associate, Stephen G. Porter, leader in the Citizens' party movement, was given the regular Republican nomination for Congress, over my old rival W.H. Graham, and was elected by ~~over~~ 20,000 majority. Mr. Porter has been successively re-elected, until he has now served some twenty-five years, attaining the high position of Chairman of the Committee on Foreign Relations. This result indicates how the temporary reform movement <sup>in Allegheny County</sup> has broken the political shackles of nearly fifty years, and <sup>given</sup> ~~given~~ to the voters the opportunity to select candidates ~~who~~ stand high in the popular esteem.

51

B

Congressional Record  
on the case

CONTESTED-ELECTION CASE—CONNELL VS. HOWELL.

Mr. DRISCOLL. Mr. Speaker, by direction of the Committee on Elections No. 3, and in pursuance of a notice given last week, I now call up for present consideration the contested-election case of William Connell v. George Howell, from the Tenth Congressional district of Pennsylvania.

The SPEAKER. The Clerk will report the resolutions.  
The Clerk read as follows:

House resolution No. 135.

Resolved, That Hon. George Howell was not elected a Representative in the Fifty-eighth Congress from the Tenth district of the State of Pennsylvania.

Resolved, That Hon. William Connell was duly elected a Representative in the Fifty-eighth Congress from the Tenth district of the State of Pennsylvania, and is entitled to a seat therein.

Mr. DRISCOLL. The time to be equally divided and to be controlled by the gentleman from Mississippi on his side and by myself on this side.

(The two days debate on this subject is omitted except as it calls for the author's participation therein, which follows:)

Mr. McLAIN. Mr. Speaker, I yield fifteen minutes to the gentleman from Pennsylvania [Mr. SHIRAS].

Mr. SHIRAS. Mr. Speaker, I have examined the majority and minority reports in this case. I have also looked over the evidence that was considered material, and I consulted at a considerable length of time with the majority of the members that composed the Republican majority in this committee. Notwithstanding the consideration given to the report of the majority, I find I am unable to agree in the recommendations made by my party colleagues. In the first place, permit me to say that I do not question for an instant the sincerity of the gentlemen who compose the majority of this committee. Anyone who listened to the remarks of the gentleman from Iowa [Mr. BIRDSALL] and the chairman of this committee, the gentleman from New York [Mr. DRISCOLL], must be impressed with the fact that these men believe they are right.

(1)

(Duplicate)

Chw

LAW, LAWMAKING, AND POLITICS

PART I

College Days, Early Political Experiences, then and thereafter.  
1877 - 1887

PART II

Nomination, Election and Service in the Pennsylvania Legislature.  
1888 - 1890

PART III

- A. Candidacy at two successive primaries for the Republican nomination for Congress.
- B. The aftermath of the above campaigns.

PART IV

Nomination, Election and Service in the 58th Congress.  
1902 - 1905

PART V

Preparation of monographs on National Police Power, the Constitutionality of Federal Laws protecting Migratory birds, and migratory fish, the Constitutionality of the Protective Tariff, the Unconstitutionality of the Canadian Reciprocity Agreement, the Character of the Federal Jurisdiction over Public Health, the need of a separate League of Nations in America and Europe, the history of the original Migratory Bird Bill.

PART I  
College Days, Early Political Experiences, then and thereafter.  
1877 - 1887

1. College Days

A. Cornell

1. Greek letter fraternities.
- \* 2. Thesis on the U.S. Constitution.
3. Political Activities at Cornell.
4. First and last meetings with Theodore Roosevelt

B. Yale Law School

1. Class mates (newspaper article on Col. House.)
2. Debates.
3. Thesis on the Protective Tariff.
4. Academic rating.
5. Decline election to the Presidency of Kent Club.

X Duck shooting on Cayuga Lake

2. Begin the Practice of Law.

- A. Starting out as a lawyer.
- B. The case of the forged will - circumstantial and direct evidence.

3. "A Pig Iron State and a Pigmy Statesman"

- A. The election of Senator Quay.
- B. Circulation of the pamphlet entitled "A Pig Iron State, etc."
- C. Comments of the public and an attempt to bring Senator Quay to trial in a libel suit against the author.
- D. Newspaper clippings.

PART II

Nomination, Election and Service in the Pennsylvania Legislature.  
1888 - 1890.

1. Campaign for the Legislature.

- A. Becomes a Candidate for the Legislature.
- B. Campaign Cards and literature.
- X C. A political story - "A Beer Bottle and a ~~Bottle~~ Bible"

- 5. The Legislature as a political training school.
  - A. Personnel of the Legislature.
  - B. The Legislature as a political training school.
  
- 6. Bank legislation and its strange sequels.
  - A. Some bank legislation.
  - B. A deadlock, defeat of the Bill, consequences.
  
- 7. Miscellaneous legislative record.
  - A. Gets a surprise (initiation to the Legislature).
  - B. The Legislature convenes.
    - 1. The Pennsylvania R.R. Pass.
    - 2. Committee assignments.
    - 3. Friendly treatment by the leaders.
  - C. A proposed illegal act and its final enactment in that form (the Distilleries Bill)
  - D. The Grade Crossing Bill.
  - E. Clippings on the Grade Crossing Bill.
  - F. Bill for better treatment of insane females.
  - G. Picture of State Capitol, Harrisburg.
  - H. Expressions of good will from colleagues on the Judiciary Committee.

*I. Safeguards against Hasty or ill considered legislation*

Combined in 1 envelope

PART III ~~4/4~~  
 Candidacy at Two Successive Primaries for the Republican  
 Nomination for Congress. The aftermath of these campaigns.

- 8. The Contest for the nomination <sup>Republican</sup> to Congress against Col. Boyne & Col. Stone
  - A. Preliminary to the campaign against Col. Stone.
    - 1. An odd decision and far-reaching consequences. *motive for entering campaign*
  - B. Contest in the Republican Primaries against Col. Stone.
  - C. Handbills for and against Boyne.
  - D. Newspaper clippings. *Col. Stone comes to the front. selecting a delegate in the 5th dist and Col. Stone carries to the front.*
  
- 9. The campaign for Congress against Col. Stone:
  - A. Nomination of Stone.
  - B. Contested election of delegates. *Mixing from both original & copy.*
  - C. Had to give up his stolen coat.
  - D. Closing days of the campaign.
  - E. Nominated in another convention.
  - F. Newspaper clippings.

10. A successful reform movement and the conviction and imprisonment of Mayor Wyman
  - A. A successful reform movement.
  - B. Report of the auditors.
    1. The Mayor brought to trial.
    2. The Mayor convicted.
  - C. A revealing interview and its consequences.
    1. The Mayor's relation to the Bayne and Stone campaigns.
    2. Mayor gets workhouse instead of penitentiary sentence.
  - D. Beginnings of a new regime.
    1. Kennedy becomes Mayor.
    2. Father appointed to Supreme Court.
    3. Retire from politics to work in law firm.
  - E. Circulars of the Citizens Committee.

11. Attempted impeachment of Judge White.
  - A. Disquieting rumors.
  - B. Preparation of Impeachment Resolution.
  - C. Resolution temporarily sidetracked.
  - D. Preparations for consideration of the Resolution.
  - E. Interview Graham and get correspondence with White.
  - F. Some subsequent discoveries.
  - G. Notarized statement of Charles V. Robison.
  - H. Letters to Mr. Shiras on the White Case.
  - I. Letters from Mr. Shiras on the White case.
  - J. Newspaper clippings.

12. Redeeming West Virginia
  - A. Hunting deer and votes in West Virginia.
  - B. Letter from Finance Committee to raise funds to redeem West Virginia.
  - C. Letter from W.E. Seymour (1896) asking help in raising money.

13. Friendships of the "Knights of the Round Table"

PART IV  
NOMINATION? ELECTION AND SERVICE IN THE 58th CONGRESS.  
1902 - 1905

14. The Citizens Party.
  - A. Organization to overthrow the Republican ring.
  - B. Accepts nomination for Congress (June 18, 1902).
  - C. Address by Mr. Shiras on "Ring Rule" (September, 1902).
  - D. Election to Congress (1902).
  - E. Some Campaign Literature.
  - F. Newspaper clippings.

*H. Am. Party Plea for Direct Democracy*

15. The 58th Congress.

- A. Unique history of the 58th Congress (incomplete.)
- B. First Session of the 58th Congress (incomplete.)
- C. Older members of the 58th Congress.
- D. New members in the 58th Congress.
- E. Prominent leaders who served in the 58th Congress.
  - 1. (Contains detailed account of Sheppard.)
- F. Some of the distinguished Senators serving during the 58th Congress.
- G. Vice Presidential Candidates in the 58th Congress.
  - 1. (Garner should be added to this list.)
- H. The daily routine in Congress.
- I. Special and general legislation.
- J. Cloak room intimacies.
- K. Wits of the House.
- L. First impressions often valuable.
- M. Need of new standing committees.
- N. Newspaper clippings.
- O. Letter - "Sorry I was not a Candidate for Re-Election".

*P. Appointment of Allegheny Postmaster*

16. The 58th Congress - Committee on Public Lands.

- A. Appointment of House Committees.
- B. Members of Committee on Public Lands.
- C. Repeal of the Timber and Stone Act.
- D. National Park in Washington.
- E. H.R. #10443 or Elk National Park.
- F. Record of hearings on Homesteads in South Dakota and Colorado.
- G. Relief of settlers in Oregon.
- H. Message from the President to the Public Lands Commission.
- I. Miscellaneous.

17. Contested election case of Connel vs. Howell.

- A. Events leading up to the contest.
- B. Congressional Record on the case.
- C. The vote and eventual results.

Copy  
CORNELL

GREEK LETTER FRATERNITIES

As I look back to my college days, it seems to me that the outstanding influence to which I was subjected was my four years of association with the Alpha Delta Phi fraternity. The members were housed in an adequate building, with a commodious living room and library, lodge room on the third floor, and ample suites of bed rooms. Their contacts were of necessity, and indeed from choice, intimate.

Most of the American colleges and universities have from ten to twenty Greek letter fraternities. Princeton, which has developed the college club, has none. Harvard looks upon them as social clubs. Yale has a one year system for junior societies. They have a hundred or more members and are looked on as stepping stones to the more exclusive senior societies. In the other institutions, as a rule, fraternity membership is open to members of all classes.

The close personal contact with fraternity associates for so many years results, as a matter of course, in the closest intimacy and lays the foundation, at the very time when friendship is most easily cultivated and maintained, for lifelong friendships. The fraternity memberships, representing widely separated parts of the ~~the~~ country, are a cross section of American life. The associations in them, thus, tend to give the individual a much more understanding view of his own people than can be obtained in the class room or as a spectator on the athletic field. I found the debates and discussions during the weekly meeting in the lodge of great interest and benefit. While I believe it is quite true that the social life within the chapter detracted somewhat from the quality of the work within the class room, yet all learning is not to be found within the text books. I am convinced that in most cases what is gained from fraternity life goes far to make up for what may be lost because of it in the class room.

(2)

DUCK SHOOTING ON CAYUGA LAKE

My particular diversion away from the campus during my college life was duck shooting on Cayuga lake. I had killed many deer on my annual visits to the Lake Superior country and had got my full share of wild pigeons and geese, but Lake Superior, a large, deep, and cold, harbored few, if any, ~~ducks~~ ducks. My shooting companions on Lake Cayuga were fellow collegians and, on occasion, sportsmen in the town. I have always felt that these outings contributed greatly to my good health, and they gave me an impetus to take that interest in wild life which was to be so intensified in future years.

## THESIS ON THE U.S. CONSTITUTION

During the senior year, the classmen were asked to prepare a paper on some significant subject in which they were particularly interested. With youthful temerity, I selected as my theme, "The Origin and Objects of the United States Constitution". That it was a crude and superficial endeavor was quite inferable from the polite appraisal made by the professor into whose hands it went: "Please read your paper again after you have been out of college four years. You will then realize more clearly what I have in mind than if I were to write a criticism now." In later years I well understood what he meant, but I was pleased to find some paragraphs that seemed to possess some merit in my more matured judgement. I quote one:

"The Constitution of the United States is not an iron band upon the body corporate and constrictive of future growth, but like the bark of a tree, it expands to meet new and unforeseen necessities. While supposedly consisting only of enumerated powers, all others being reserved to the states of the people, there are many other powers which can be implied from the general purposes of the central government or which are inherent as the necessary attributes of sovereignty. Consequently, it is not always necessary to amend the Constitution when some additional powers are needed, but these can come by judicial interpretation or by acts of Congress."

In the light of the fifty years that have passed since these sentences were written, I find considerable verification of their estimate. The judicial construction or legislation by Congress on the clause in the Constitution authorizing the regulation of commerce with foreign nations or between the states is an indication of the soundness of this early view. This power was originally exercised only in preventing the several states from putting a ban, or restriction, on commerce between the states. But later, it became the greatest positive force in regulating, or even prohibiting, many forms of foreign and interstate commerce.

In comparatively recent years the Federal government assumed control of navigable waters, even to the extent of becoming a proprietor. This has occurred although the word 'navigation' or any of its synonyms is not to be found in the ~~Constitution~~ Constitution. Likewise, the Federal quarantine has been established and greatly expanded so as to protect public health and to protect and promote

the agricultural industry. The word 'quarantine' is not to be found in the Constitution, but the function, being an accepted power inherent in the sovereignty of all progressive nations, comes as a matter of course within the scope of the Federal government.

The extension of public works to include irrigation, reclamation and water power would have been frowned on fifty years ago. Taxation has been used to wipe out the currency of state banks and to control the sale of oleomargarine in interstate commerce. Restrictive immigration laws have been expanded far beyond the enumerated purposes of the Constitution as viewed by its makers. The constitutional provision regulating 'controversies between states' which was originally conceived to relate to boundary disputes, or like disputes involving the sovereignty of two or more states, has now been construed to ~~XXXXXX~~ cover disputes over excessive water pollution and the equitable distribution of water for irrigation or reclamation purposes.

Although the first decision on this group of questions was reached by a vote of five to four, subsequent decisions in which the same points have been involved were unanimous. In one of the last of these cases, it was held that no state could unreasonably pollute or poison the atmosphere, to the the detriment of an adjoining state.

Many other examples might be cited, but those given, suffice to give authoritative support to the author's early views.

(5)  
~~16~~

POLITICAL INTERESTS AND E.W. HOUSE

Before going to college, I had only a casual interest in political affairs. I entered Cornell University in the fall of 1877, but it was until the fall of 1880, during the concluding days of the presidential campaign between Garfield and Hancock that I became interested in the outcome of a national election. Among my intimate classmates and a member of the same fraternity was Edward W. House, who in later years became a leader of the Democrats in his native state of Texas and during President Wilson's terms of office became his close friend and adviser. House is still well-remembered for his frequent representing of the President abroad during the World War and thereafter, in the capacity of spokesman or special envoy.

As I recall it, House and I were the only members of the fraternity sufficiently interested in the campaign to visit the newstand every evening to get without delay a copy of the day's issue of the New York Tribune and World, the leading organs of our respective parties. I ventured to make a few addresses in some of the country school houses where callow utterances would be endured. But House, never given to public speaking, helped with his advice and finances, the cause of the local Democratic organizations. At that time, I discovered those elements in Col. House which afterwards made him one of the outstanding figures in American public life. He was quiet and suave in manner with a remarkable aptitude for understanding almost any situation whether it be political or relating to the social life of his college mates. He frequently became the peacemaker in the many little controversies arising among us. His unruffled demeanor did not mean that he lacked spirit or courage, for deep within him was a touch of southern temper that became manifest on several occasions.

YALE LAW SCHOOL  
THE PROTECTIVE TARIFF

In the fall of 1881 I entered the Yale Law School, intent upon giving more serious attention to my studies than they had heretofore received. In this I was fairly successful, though the Long Island Sound, with its winter duck shooting, proved a temptation to which I frequently yielded.

The Law School offered at that time a two years course, which was later increased to three. In the classes, Junior and Senior, were an average of forty members. The school had a well deserved reputation, due to its excellent faculty and the condition that the small size of the classes made practicable the recitation system which had been given up in the larger schools. In most of the latter type, the lecture system, with its opportunities for shirking work, prevailed.

I shall pass over in these pages the routine work of the class room and refer to matters of greater interest to those planning to follow the profession of law. The Kent Club concerned itself principally with mock trials, the argument of the legal principles in certain cases and debates on questions of national interest. A presidential election was pending, with the principle issue as the protective tariff. During the first debate, I was surprised to find that two-thirds of the students were free traders. With three exceptions, the remainder were unfamiliar with the subject, so at the outset the free traders had things pretty much their own way.

Their relative strength in the Club had a simple explanation. In each class were from eighteen to twenty students who had entered the Law School after having been graduated from the academic department of Yale where they had been subjected to the influence of William Sumner, one of the leading political economists of the country. It has been often said that practically all the students who heard Professor Sumner's lectures were, at graduation, ardent free traders, whereas ten years later most of them had accepted the doctrine of the the protective tariff.

I happened to be one of the three students who had given some attention to the subject and had come to believe in protection. As I came from the great industrial city of Pittsburgh this was not surprising. Naturally enough my free trade associates contended that the selfish local interests of my home town accounted for my views and for my willingness and desire to subject the entire country to a policy that particularly benefitted the industrial centers.

Among my classmates was Daniel W. Lawler of St. Paul, accepted by the students of the Law School and by the College at large as the most polished and trenchant debater among the undergraduates. A sincere Democrat, he accepted and advocated the principles of free trade. When, however, he found the three lone protectionists overwhelmed by the skillful and fervent attacks of the Summerites, his sympathy went out to us. While he did not come out for protection, his searching criticism of the arguments of our opponents proved of great help to us in winning recruits.

I realized from the beginning that to make progress we had effectively to meet that charge that in Pittsburgh and other industrial cities favored by the tariff only the favored few were its beneficiaries and that such advantages as the system had were more than offset by the burden it imposed on the community at large. The state of Connecticut, in which we were temporarily residing, and the other New England states contained many manufacturing establishments. The welfare of the communities in which they were located depended almost wholly on protective tariff barriers.

To clinch my point I finally offered an example of the dependence of a community upon the presence and prosperity of its manufacturing establishments. The Willimantic Thread Mills had recently been built upon the banks of <sup>a</sup> river of that name, whence it had abundant water power that permitted of low operating costs. Up to that time, the American market was supplied with thread from Great Britain and Europe. The cost was so high that the home producer was assured a good market if he could be secure against the likelihood that, ~~faced with decess-~~

faced with domestic competition, the foreign manufacturers would reduce their prices 50 percent, and the further probability that, if this did not suffice to destroy the new American industry, they would sell below cost to accomplish their purpose.

The Willimantic mills were, in effect, the creation of the protective tariff. Congress was memorialized on the subject, and assured that with protection for a home thread industry, capital for domestic mills could be secured and the home market developed, with ultimately lower prices for thread. The argument was impressively urged, and following enactment of the tariff, the barren hillsides that were the site of the Willimantic mills became the location of a busy and prosperous community in which the nearby farmers found a profitable market for their products.

In order to bring home to my fellow students the benefits of the tariff, direct and indirect, and also its benefits to the consuming public, I arranged with an executive of the mills for a visit to Willimantic by all the students of the law school. We were assured of a cordial reception and promised a lunch on the day designated.

The trip to Willimantic was made in a special train which waited to take us back. We were shown thoroughly through the large factories filled with hundreds of operatives, mostly young women from New England farms or members of households within the recently constructed town. These employees had found a ready and satisfactory income within buildings where sanitary surroundings had been carefully provided.

A glance at this little settlement told the simple story of the direct and collateral benefits of the protective tariff. This was understood much more easily than in the case of large industrial centres. It was apparent that this once barren hillside and unused water power had been brought into occupation and use by a single item in the tariff law. Every business house and every dwelling, every office building and every member of the varied

professions owed their presence to the successful operation of a single plant.

Of equal importance was the fact that the cost of thread had been reduced far below the prices originally paid on foreign imports. Thus the little town was a visible unit of the tariff system, and the consuming public throughout the country shared equally in the common benefits.

In conclusion, I have reason to believe that the determined fight made by the little band of protectionists at the beginning had won the respect of the opposition, and their action was taken as a graceful compliment to this element. Under the circumstances, it was perhaps natural that the subject of my thesis was "The Legality and Benefits of the Protective Tariff". More than twenty-five years later, and after retiring from Congress, I wrote a monograph on the same subject where I clarify, and, I think, render more effective positions which in the beginning were necessarily crude and undeveloped.

(11)

DECLINES PRESIDENCY OF THE KENT CLUB

It was the custom at the beginning of the senior year to elect a president of the Kent Club, the office usually going to a member who had been active in debate or in promoting the club's interest. Greatly to my ~~sur~~prise, I was unanimously nominated and elected to the office.

After expressing my appreciation of the honor, I, in my turn, gave the members a surprise by respectfully declining to fill the office. I told them that I preferred the freedom of the floor to the dignity of the presiding officer's chair.

Neither did I have any liking for the principal honor attached to the office, namely presiding and introducing to the faculty and the undergraduate body of the University, the half dozen distinguished jurists and statesmen who delivered each year these addresses. Formalities of this kind did not appeal to me.

(12)

GETS RANK OF SIXTH IN CLASS

The ranking of the first five in the class at the Law School was based on the examination papers of the preceding year - and the honor students were given cum laude degrees. I was entirely satisfied with being rated six but was chided by one of my friends for too much devotion to duck hunting. This, he said, was the reason I was not rated higher. I went duck hunting every Saturday, which necessitated my missing the recitation in criminal law. As few of the students were interested in criminal law and as Saturday was, naturally, not a popular day for class room work, the professor who had the course had to use a little coercion to prevent the class room from being empty. Accordingly, he was the only member of the faculty who took attendance into consideration in determining his ratings. The result for me was not a happy one. But I told my protesting friend that he should not overlook the pleasure and exercise I had had on my hunting trips or how grateful some of the men on the honor roll should be because I had cut the Saturday classes.

By something of a coincidence thirty-five years later, Theodore Roosevelt and I received from Trinity College, in the same state, the honorary degree of Dr. Sci. in recognition of work as field naturalists and conservators of wild life. Embossed on my parchment, in Latin terms, is approval of my long advocacy of hunting wild life with camera and flashlight. I have often thought since that while I perhaps lost a possible honor as a student by reason of my devotion to the study of game the loss was more than compensated for by the gain of a later degree in recognition of the persistence with which I had pursued it.

(Duplicate)

125m  
A COMPARISON OF DIRECT AND CIRCUMSTANTIAL EVIDENCE

I shall never forget my first experience in a trial court case, not only because it was my first effort, but also because of its interesting character. On the occasion in question, Mr. Dickey asked me to assist him in a contest over a probated will in which his clients alleged that the document had been forged, thereby illegally depriving them of their share in their father's estate. I felt certain that Mr. Dickey had generously called me into the case by way of encouragement. And I deeply appreciated the opportunity and responsibility.

The testator of the alleged will devised a valuable farm for life to a wife by a second marriage, providing that on her death the property was to go to her children. According to these terms, none of it would go to the children of the first wife. The will when filed in the orphans court was in English and purported to have been signed by the testator. The sons of the first wife in consulting with Mr. Dickey declared that their father was an aged German who could not write English, nor, they maintained, was the signature attached to the will that of their father. The widow when probating the will swore that it had been found in an old family bible and that it was in the handwriting of her husband. Under the Pennsylvania law, two attesting witnesses were required, but this had been construed to mean that in the absence of such witnesses to the will, two others familiar with the signature of the testator could be called on to attest to the same. This was done by the friends of the family.

Before the case was called for trial, a number of experts on handwriting were consulted and all agreed that the will could not have been written by an aged German unaided by anyone, and moreover, that the handwriting evidently was that of one under the age of sixteen, while the signature was not similar to those on deeds and mortgages admittedly signed by the testator. A few days before the case was called in the Orphans Court, a jury trial was waived by agreement of counsel, the presiding judge being authorized to hear the evidence and pass upon the questions of fact and of law.

Mr. Dickey was of the opinion that the circumstantial evidence in the case was conclusive as to the forgery of the will, and he had no doubt that the court would have no difficulty in reaching the same conclusion. I agreed with my colleague, but said I thought it was our duty to find out who had forged the will. To this desire my associate offered no objection, but he thought I would not get very far in this investigation as the case was to be called the next day.

I sent immediately for one of our clients and told him I thought the will had been forged by the younger daughter of the widow. In view of the expert's assurance that it had been written by a young person, she seemed to be the one most likely to have done so under her mother's instructions. To this view the step brothers agreed. To determine this if possible I asked to be supplied with any writings of the one suspected. Late that evening one of the contestants called at my home, stating that he had been able to find only an envelope addressed to him by his stepsister. Limited as was this writing, it further confirmed my suspicions, for in the name of the addressee, Gustavus Dice, the capital 'D' of the surname corresponded exactly with the misuse of the same capital in the word 'Death', used in the will. Both 'D's' were large, flourishing and identical in appearance. This, when followed up, confirmed my conclusions and practically ended the case at this juncture.

On our way to the court house the next morning I told Mr. Dickey what I suspected, but he protested against any attempt to drag this young woman into the case saying that this imputation, if not established, would react and might spoil a perfectly good case. I called his attention to the fact that we were not trying the issue before a jury and that the court would not resent any honest effort on our part to prove who had forged the will. Therefore, I asked Mr. Dickey that when the case was called he permit me to make the opening argument and if I failed in my effort to show who the forger was, he could follow it up in the way he had originally planned.

On addressing the court, I said that the plaintiff's counsel would make no opening argument as the papers before the court indicated the issue, and

accordingly we would call our first witness. Thereupon, I summoned to the stand the young woman suspected as the guilty one while my colleague looked on with misgivings. Handing the witness a lead pencil and a tablet, I asked her to write what I would dictate. Then, I read the will slowly without showing it to her. When she had finished writing I looked at the paper, and to the surprise of the counsel on either side I handed to the court this paper with the request that it be marked 'Exhibit A' and that this would complete the plaintiff's case.

The court after reading the exhibit, asked to be furnished with the contested will. After making a careful comparison of the two papers, during which he smiled broadly, the judge handed the same to the defendant's counsel, saying that with the case closed for the plaintiff, he should proceed with the defense.

Thereupon, the defendant's counsel, an active practitioner for more than 25 years, examined the exhibit. It was evident to him that the will and copy were duplicates in spelling, punctuation and the formation of the letters. As the witness had not seen the original will for a year and wrote it down at my dictation without again seeing the same, it was evident to the most casual observer that the forger of the will had just occupied the witness chair. The defendant's counsel told the court that their side would offer no evidence in rebuttal but would leave the case in the court's hands for final determination.

At this, the judge said that he was convinced that the will and register had been forged and would file his opinion to that effect. That night the young daughter, fearing prosecution for perjury or forgery, eloped with the hired farmhand, fleeing to an adjoining state. Her stepbrothers, however, would not have prosecuted her knowing that she was but the youthful dupe of an avaricious mother. Here was a case vividly showing the difference that sometimes exists in the character and value of direct and circumstantial evidence.

Twenty years later, I chanced to meet Judge Over who had presided at this trial, and he said "I have never forgotten your first case that happened to be tried before me and in which you not only conclusively proved that an alleged

will was forged, but also who had forged it."

I assured the judge that i greatly appreciated his present statement, although I regretted that he had not told me this at an earlier date when encouragement was often needed by a youthful practitioner.

(Duplicate)  
Chapter 3

(1)

"A PIG IRON STATE AND PIGGY STATESMEN"  
A Protest against the Election of M.S. Quay as  
United States Senator in 1897.

As the term of Senator Mitchell approached the close and not being a candidate to succeed himself, candidates appeared from various parts of the state. Because the Democrats had elected their gubernatorial candidate in this Gibraltar of Republicanism and because our representation in the Senate was weak or unfit, many Republicans hoped that the next senator would be a man of high character, proved ability, and wide experience. However, they were doomed to disappointment for without much effort, Matthew Stanley Quay, then State Treasurer and a reliable lieutenant in the Cameron dynasty, was chosen the party nominee at the Republican caucus.

This selection caused protest throughout the state and elsewhere. On the morning of the day that the Legislature assembled in joint session to elect a United States Senator, a pamphlet was laid on the desk of each member. It bitterly assailed the reputation and statesmanship of the one about to be elected by the ballot of the members.

Upon the reading of the pamphlet, much confusion arose. One member declared that he knew by its style that the attack had been written by a correspondent of a New York paper. Others made random guesses as to its source or object. I was the author of the pamphlet in question, and it was written with no idea that it would affect the election but as a protest against a candidate whom I thought unfit for the position.

The references in this attack to Quay's speculation in Wall Street in company with other state officials and the use of funds from the state treasury to replace heavy losses in the stock market had previously been verified from authoritative sources. Although the state lost nothing by reason of repayment to the treasury by wealthy associates of the retiring treasurer, the charges were too serious to warrant their suppression. The text of the pamphlet was as follows:

These charges were so serious that, published anonymously, they naturally created deep resentment among Senator Quay's friends. At the same time, while the public was interested in the charges directed against the State Treasurer's honesty, it was circulated about in certain circles that the feeling of the public was that an unfair attack had been made upon the incoming senator. Many felt that whatever might be his shortcomings, he should not have been made the victim of an anonymous attack.

I had had in mind from the inception of my plan to lay before the public in definite language these serious charges on the very day he was to be inducted into his high office, this very situation. I had just as much dislike for anonymous attacks as the most meticulous observer of propriety, and the observance of the rule of conduct was to be met by my methods of procedure. I assumed, and rightly, that on the circulation of this pamphlet on the floor of the Legislature and its reproduction throughout the press of the country, there would come a challenge from the friends of Senator Quay that the one who had been responsible for this devastating attack on the character of the Senator should make his name known or go down in history as a maligner of the most despicable character.

These anticipated conclusions verified my judgement and made possible the putting into effect of a plan that would settle for all time the question of the guilt and innocence of the Senator and, thereby, perform a great public service to the state and the nation. If my plans didn't miscarry, Senator Quay would either be vindicated or the resulting disclosures would result in conviction and a consequent retirement from the Senate.

To bring this about, I wrote a letter to state senator Rutan from Beaver, Senator Quay's home country, as follows:

"Dear Senator:

Since the publication of the little pamphlet circulated in the Legislature attacking Senator Quay on the day he was elected to the United States Senate, I have noticed a vehement protest on your part against those responsible for the circulation of this attack, charging that the falsity of this vicious

attack was apparent to the Senator's friends and the public at large because it was anonymity, the method of all vilifiers who did not dare make known their true identities.

"As the writer of this pamphlet, I heartily agree with your condemnation, even though it ignores the possible truth of the charges, because in the minds of all fair-minded men, anonymous charges usually carry their own condemnation. In order to meet such a situation, I make the following proposition: That upon the disclosure of my name, Senator Quay will agree to bring a libel suit against me for a substantial amount, subject to the following conditions; to wit, that in the trial of this case, he may be called for cross-examination as an adverse witness and that my counsels have the right to subject the plaintiff to such a cross-examination as is allowable when calling on adverse witnesses.

In order to establish the good faith of this proposition, I shall arrange to deposit the sum of \$10,000 or othersum that may be agreed upon in order to ensure his expenses and attorney fees. The balance, if any, should go to such a local charity as Senator Quay may suggest; for I assume that in case of this trial what he would seek would be his vindication and not any monetary award in addition to this. Therefore, I wish, if this proposition is accepted, that you cause to be published in the public press the following statement:

'It will be of interest to everyone to know that steps are being taken to bring about the disclosure of the authorship of the pamphlet recently attacking Senator Quay on the date of his induction as Senator.'

"From such a statement I will understand that Senator Quay accepts the terms under which this disclosure is made. On the publication of the suggested statement or of one of similar import, you will receive a call from my counsel. While not disclosing the name of his client during this first conversation, my counsel will let it be known when I am satisfied that a binding agreement has been entered into by Senator Quay to accept my challenge in the manner suggested."

For some days after having written this letter and having definitely learned that it had been examined, I searched the newspapers regularly. But I found no response in the papers on this subject. Consequently, from that day down to the present, no one except myself and an intimate friend of mine who mailed the circulars to Harrisburg knows the inside history of this affair. Nor will anyone ever know the true facts unless someday there is published in my biography a history of this affair.

Chapter 4

(Duplicate)

BECOMES A CANDIDATE FOR THE LEGISLATURE

for  
Ernest N. M.

In the spring of 1888, after practicing law for about four years, I came to the conclusion, after careful consideration, that it would prove an agreeable and instructive experience to serve as a member of the Legislature for a term. I felt that a period of service in the House, where I might become familiar with law making and the activities of the Department would, provided that I went there with the intention of doing serious work and making the most of my brief opportunity, be of great subsequent benefit in the practice of law. It would mean building up an acquaintance, both legal and political, throughout the state. I also believed that the committee work and the opportunity of following and participating in the discussions on the floor would familiarize me with the State Constitution and the public problems of the hour. What I had in mind was, therefore, in harmony with my purpose to continue the practice of the law without intermission. I had no intention of again seeking public office or of following any other course that would divert me from <sup>my</sup> chosen profession.

The party primaries were to be held a couple of months after I had decided to become a candidate. I lived in the first of the two legislative districts in the city of Allegheny, now the northside of Pittsburgh. All the wards, with one exception, lay east of Federal street and were controlled by voters of German extraction, among whom I had but slight acquaintance.

Preparing to make a start, I consulted with my uncle, Major W.M. Kennedy, a resident of one of the most populous wards in the district, who had been a factor in local politics for a long time. As other candidates had covered the field pretty thoroughly, he was of the opinion that I had waited too long and that I would, by reason of the late start, be badly handicapped. Before I took any definite step, he advised me to call on Pete Walters, a leading and influential German. Pete Walters was the proprietor of a drug store on a street dividing

the two largest wards and had been for many years an adviser to those having political ambitions.

Walters shared Major Kennedy's view that I was too late in announcing my candidacy, particularly as two candidates, Robison and Staving, had combined on delegates and had already done so much work among the voters that they felt confident of nomination. The kindly old druggist, however, apparently not wishing to discourage me any further, told me he was committed to only one of these candidates. Furthermore, he stated, that <sup>it</sup> would make a combination with the man to whom he had promised support, I could, in his opinions, win the contest.

Replying to his outline of the situation, I said I thought too many campaigns were begun too soon and that effective work, after a late entry, would more than offset any possible advantage resulting from an early start. I also voiced objection to any effort to break up the Robison-Staving combination, saying that if there were to be any overtures to this end, they might, in my opinion, better come to instead of from me.

I urged these views on my advisers with success. And they agreed to help set up a complete slate of delegates, leaving the choice of the second candidate to be nominated to later consideration. The events justified the view I urged on them, for I received, after my delegates were announced, an offer from each of the two candidates to join him as his running mate.

But this only raised another serious problem. The Germans in the district, comprising a large majority of the voters, had for years been indignant over the terms of the existing license law which had imposed higher license fees and reduced the number of licenses that could be granted. As in the previous biennial election, the Democrats, with two German candidates, had swept the district, I was strongly advised to throw in my lot with Staving, a county office holder and influential among his fellow Germans; but I preferred Robison. He was well educated, a good campaigner, and a genial fellow. The likelihood that he would make a better legislator than Staving much appealed to me. I had

long observed that the legislators from the large cities like Pittsburgh and Philadelphia were infinitely inferior in mind and character to those representing the rural districts. There was the additional consideration that they were largely controlled by the city or state rings. It seemed my duty to team up with Robison regardless of the consequences, and this I did. Fortunately for us and the success of the party in the district, the situation was simplified before the primaries by Staving's withdrawal. Thus, Robison and I went into the election with a fairly united organization behind us.

As the Democrats had again nominated two Germans, it was predicted on all sides that we would have a hard fight, with the chances of success none too good. But I believed that the fact that it was a presidential year, with Harrison and Morton the Republican nominees, would count strongly in our favor. The voters were nominally Republicans and in a national election would not be likely to cut their local candidates.

The canvass was vigorously undertaken by myself and colleagues. Daily, we made political addresses in the various wards, while about once a week, there was an old-fashioned torchlight procession composed of our local supporters. The procession carried plenty of red fire, and the astute Major Rush Tyler, a veteran of the Civil War and a most capable campaigner, was in command.

During the contest, the Pittsburgh ring looked askance at our candidacy; for it was the custom to control the entire county delegation. However, as it was known that I was also anti-quay, the arch enemy of the local bosses, we were permitted to go ahead without interference.

The forebodings of those fearful of defeat proved groundless. We were elected by 1,800 majority, almost an exact reversal of the Democratic majority two years before.

A POLITICAL STORY

A few days after my election to the Legislature, the Round Table and some additional friends gave a dinner in my honor. The toastmaster of the occasion was a college roommate and felt privileged to say anything he wished about my political endeavors. He told how a few days before he had met Mr. L.-- one of the defeated Democratic candidates and asked him how it was that he had been so badly worsted when only two years before he had been so successful.

"That is easy to explain", said the disgruntled candidate, "for when Shiras and his friends went into the German wards, it was pointed out that his great grandfather in 1800 had built the first brewery in Allegheny County. Thereupon, the Germans flocked to his support.

"Then the some campaigners went into the Presbyterian wards at the other end of the district and told how another great grandfather of the candidate, in 1810 founded the First Presbyterian Church, serving as its pastor for 50 consecutive years. This turned the religious element against the beer-loving German candidates."

He concluded by saying sadly, "Not letting your right hand know what your left hand did made it possible to carry a beer bottle one day and a Bible the next. You can't beat such a combination.

This story created much merriment at the table, but the victim declared that the tale resulted from an overstretch of the imagination on the part of the defeated candidate.

(Duplicate)

Chapter 5

(Wm)

Ev 5

THE LEGISLATURE AS A POLITICAL TRAINING SCHOOL AND ITS PERSONNEL

In government each State is a miniature of the United States. For each is defined in its territory, is a sovereign in domestic matters, and otherwise resembles the nation of which it is a component part. The states have a chief executive with cabinet officers or other State officials corresponding thereto. It has a supreme court and subordinate judiciary, a legislature composed of a house and senate, and a territory divided into counties that bear the same relation to the commonwealth that the states bear to the national government. Each State sends its allotted members to the national legislature, while the general government allots to each State, members of the Federal judiciary and other officials connected with the executive department, such as district attorneys, marshals, revenue collectors, postmasters, etc. Thus, we have forty-eight states complete in their governmental functions and a nation equally complete in its functions.

Before going to the state capitol in 1889, I was thoroughly impressed with the feeling that the average state legislature was an assembly of politicians or men of mediocre ability and that, collectively, they represented a rather low stratum in public life with the result of misgovernment or extravagance in the management of state affairs. These views were unduly influenced by the general character of the members coming from the two large cities at either end of the state and by the tendency of the daily press to magnify all that was reprehensible in the legislature and to largely ignore the every day work of this body and the faithful discharge of the many duties imposed upon those active in committee work or in the orderly management of the affairs of a great state.

While I had some uncomfortable or disconcerting experiences as evidenced by the bank bills, the grade-crossing bill, and the attempted impeachment of a county judge, I was able to see in a very short time that the calibre of the members

was of a high order. Aside from political automatons from the larger cities who created a vacuum rather than a force for evil, the members from the small towns and country districts were honest, able, and generally congenial. This group was made up of lawyers, former judges, bankers, merchants, physicians, and educated farmers. While such men as these, constituting a majority of the body, were susceptible to the cunning manoeuvres of the state bosses or the insidious pressure of powerful corporations, I found that whenever an issue affecting the public welfare was properly called to their attention, these men would promptly break away from unwise leadership or would defy political coercion.

As the legislature of Pennsylvania had long been depicted as an unscrupulous and an inefficient branch of the government, I have little doubt that the legislatures of other states have been equally maligned. Nearly half of our United States Senators, Congressmen, and many Federal Judges, governors and similar high officials have served in the state legislatures. The training and the prestige which ~~obtained~~ they obtained there largely accounts for their subsequent successful careers. A number of Presidents have seen service in the legislatures, Garfield and Theodore Roosevelt among others. In later years, their careers were much influenced by their early entry into public life. Ex-Governor Alfred E. Smith, Democratic candidate for President in 1928, acquired much of his political fame as a legislator in his home state.

Chapter 6

(copy)

Envelope 6

(1)

Some Bank Legislation With Strange Sequels.

Before the session opened I had been entrusted with the presentment of two bills prepared by former Chief Justice Agnew and desired by the Bank of Pittsburgh, one of the most famous state institutions throughout the country, it having been organized in 1810. The purpose of one measure was to permit the renewal of state bank charters, the former statute thereon having expired under a time limitation, and the other permitted a state bank to become a national bank without cessation of business and liquidation. Without the passage of the first bill the Bank of Pittsburgh could not continue and should the second bill become a law this bank could take advantage of it later on, if it seemed desirable. On my introduction of these measures they were referred by the speaker to the Committee on Banks of which I was vice-chairman. After I had explained to the committee the purposes of this legislation the two bills were reported out affirmatively, and went on the calendar. On the first and second reading of the bills no objection was made to them and it seemed they would pass on third and final reading without any trouble.

Before final passage however I received a telegram from Marquette Michigan my summer home announcing the arrival of a son and I left that evening for the West. The two bank bills on third reading were called up during my absence when objections were made by a Philadelphia member. This critic had not proceeded very far when he was interrupted by John Fow the minority leader of the House who in stentorian tones which had previously led to his being named "Foghorn" protested against

any attack on these measures during the absence of their author who had been called away to greet the arrival of George the 4th. In conclusion he expressed the hope that not a single vote would be cast against this legislation in view of the circumstances. Thereupon the objector sat down and with the rest of the House recorded a unanimous vote for the passage of the measures. Hearing about this later, I felt that my absence had been more eloquent than my presence.

(copy)

A Deadlock On The Bank Bills.

A few days after the two bank bills were sent to the Senate, and referred to the appropriate committee, Senator Newmyer of Allegheny County called on me in the House. He then asked me what had become of his bank bill providing for the punishment of bank officials who received deposits after the bank was known to be insolvent? I told him that this senate bill had been referred to the Committee on Banks at the time I was acting chairman and that in the opinion of the committee the bill was a dangerous one as it did not accurately define what constituted insolvency, and moreover it was unconstitutional in whole or in part because it attempted to regulate national as well as state banks. As the senator had not asked for a hearing before the committee, and in view of our united belief that such legislation should not receive a favorable report, I reported it out with a negative recommendation. "well," remarked the senator gruffly, "I will tell you what is going to happen tomorrow morning." "what is that?" I asked serenely. "At the morning session" he said "You will rise in your place and ask the speaker to refer this bill back to the Committee on Banks for further consideration". Ruffled by this assertion I made it plain that I would do nothing of the kind. "Oh, yes you will and I have the means of forcing this action." "You Have", he continued two bank bills before the senate committee of which I am a member and there they will remain until you have my bill referred back to your committee and later reported out favorably." Much surprised by this threat and its unfortunate consequences if carried out, I adopted a conciliatory tone and pointed out that the life of one of the oldest banks in the state would be ended and others would be in the same fix a year or two

later. This plea, however, had no effect and he again repeated the program that I must follow. Here arose a crucial test of what should be done. I might forcibly call the attention of the House to the effort of a well-known Senator to force through unwise legislation or otherwise sacrifice two meritorious measures, thus affording an unusual opportunity for an address on the culpability of such a bargain, or I might silently acquiesce in order that justice might be done to the banks involved. This latter, course I followed although it was most irritating.

#### Some Extraordinary Consequences.

Some months after my two bills, and that of Senator Newmyer had been enacted, an indictment was found against Senator Macfarland of Philadelphia, a roommate of Senator Newmyer and the head of a defunct bank that had received deposits after becoming insolvent. The accused senator fled to Canada where he remained until all danger had passed. Following this came the arrest of Senator George W. Delamater, a conspicuous party leader in the state and likewise a close friend of Newmyer. Senator Delamater was then being groomed for the gubernatorial nomination the following year and through the activity of his friends the accused Senator was acquitted on a technicality. His later nomination as governor resulted in his disastrous defeat which was wholly charged against his scandalous escape from the toils of the Newmyer Act so that for the first time in a quarter of a century there was a Democratic Governor.

Meeting Senator Newmyer on the street one day, in our home town, I told him that I owed him an apology for opposing his bank bill, since it had proved a much better measure than I thought it would. He gave

-3-

an indignant snort and passed on. As a final sequel to this legislation it may be stated that the supreme court of Illinois declared a similar bill unconstitutional in part because it attempted to regulate national banks.

*Chapter 7*  
SERVICE IN THE PENNSYLVANIA LEGISLATURE  
THE LEGISLATURE CONVENES

*Envelope  
Duplicate I*

A few days before leaving for Harrisburg, I received a polite note from the general passenger agent of the Pennsylvania railroad stating that his company took pleasure in issuing an annual pass for my use and asking that I call and receipt for it.

I was aware of the powerful influence that this road had exerted on the Legislature and of the success it had met with in getting what it wanted and in defeating any legislation inimical to its interests. For this and other reasons, I decided not to accept the pass. On the day of my departure, I received a registered letter. When I opened it, I learned that I had unwittingly accepted for a Pennsylvania pass. When I showed it to my father, he took a pencil and ran a line through the prefix "Hon", saying that if I were going to use it, the adjective was inconsistent with my attitude toward my public duties. I returned the pass and, as will be related later, soon had occasion to be glad that I had done so.

On reaching the capital, I took a room for the session at the Lochiel House, a famous old hostelry patronized by the more active members of the Legislature and state officials. Consequently, it was the headquarters for important political conferences. I was asked by the Speaker of the House, Henry K. Boyer, to occupy a chair at his table, where in addition to Harry Huhn, the parliamentary clerk, there were several prominent members. Daily contact with this group <sup>enabled</sup> ~~enabled~~ me to obtain information as to my future duties, which I could have obtained in no other manner.

The Speaker was a man of unusual attainments. He was tall, well built, and dignified, with a personality that ~~xxx~~ won the friendship and confidence of all the members, regardless of party lines. As a parliamentarian, he had few equals, partly the result of having presided over previous sessions.

After his installation in the house of which I was a member, he asked the members to indicate their preferences for committee assignments. I had realized

from the outset the importance of getting on committees that would have congenial work to do and that had some importance. As I was free from entangling alliances and had no ambitions to continue in public office, I was interested only in the opportunity to do some worthwhile work. My first choice was the judiciary general committee, composed almost entirely of lawyers, including the majority leader. To this committee bills of importance that possibly required amendment and measures of doubtful constitutionality were referred. Although I was a new member, I was appointed to it, an honor due in large part to the fact that no one else from the big delegation from Allegheny county had asked for a place on it.

I then asked the Speaker to place me on the committee on banks. He smiled broadly at my request, saying that this committee rarely met and that in some sessions it failed to assemble for even a single meeting. That would not be the case in this session, I assured him, as I had two important banking measures which I proposed to introduce; these would naturally be referred to the committee on banks. Accordingly, he appointed me the ranking member with the power to call the committee together in the absence of the chairman. Two minor committees, Geological Survey and Federal Relations, the latter of which I was made chairman, completed my assignments.

#### FRIENDLY TREATMENT BY THE LEADERS

The friendly attitude of the Speaker and his close associates could be accounted for partly by the fact that I and my colleagues became candidates for the Legislature without the consent or endorsement of Magee and Flynn who had long been the bosses of Allegheny County. This was the only section of the state not under the political control of Senator Quay. The feud between these two groups had existed for years, but Senator Quay with all his influence and prestige was unable to oust this powerful local machine. It was quite natural, therefore, that in Harrisburg where Quay was supreme in all legislative matters, I might properly be regarded as pro Quay or at least friendly to the Quay organization.

It was not then known that I was the author of the anonymous pamphlet

"The Pig Iron State and Pigmy Statesmen" in which Senator Quay was directly charged with speculating and losing a large sum in the State Treasury over which he presided. Had this fact become known, I would have been on the black list, and the courtesy shown me mentioned before, would have been emphatically denied me.

#### GETS A SURPRISE

A few days after the convening of the Legislature, I was seated at my desk writing a letter. Suddenly I became aware of an unusual silence in the Chamber broken by a member opposite me calling my name while another member in the rear pounded on my back. Looking up I saw the Speaker standing erect with his gavel poised in the air and looking intently in my direction. Then the presiding officer ~~repeated~~ repeated what he had evidently said before: "The gentleman for Allegheny will please take the chair."

This request came as a shock, for although not subject to stage fright, I had no liking for the formal duties of a presiding officer, as previously indicated when I declined the presidency of the Yale Kent Club. Pulling myself together, I walked down the aisle which seemed interminably long and mounted the steps leading to the Speaker's chair. With a dignified bow, he handed me the gavel, and I made an awkward curtsy in return.

Gazing out over the sea of faces where many were wondering who in thunder had taken the chair, I shouted, "The House will please come to order," though you could hear a pin drop so orderly was the body at that moment. Looking to one side of the chair where the parliamentary clerk was usually concealed and in a position to prompt the Speaker on matters involving the rules or practices of the House, I found this useful person absent. A moment later, I was attracted by a member rising and asking for recognition. Not knowing either his name or the county he represented, I told him to proceed, whereupon he read the title of a bill he was then introducing, and the measure was taken to the Chair by a page.

At that moment I heard a slight noise to my right and there saw the smiling countenance of Harry Huhn, the Speaker's clerk and one of my daily companions at the dinner table.

I whispered to him, "What in the world am I to do with this confounded paper?" He whispered back that I should read the title of the bill aloud and refer it to its appropriate committee, which in this instance, I had no trouble in determining. Thereafter, all went smoothly. Nevertheless, I was greatly pleased to see the Speaker approaching. As he took his place, he whispered, "You might have done worse, for we were giving you the third degree."

MADE IN GERMANY  
BOKO  
HAWKHELM

(Duplicate)

EW-7

#### SAFEGUARD AGAINST HASTY LEGISLATION

In Pennsylvania and many other states, the consideration or enactment of legislation is so safeguarded that no member can ever assert that bills were called up or enacted into law without having due notice. Under the state constitution, when measures are first introduced, the title is first read by the member introducing the bill and read again by the Speaker when he announces the committee to which it has been referred. When reported out favorably, it is placed on the calendar and must be read at length three times on three separate days. On the second reading, it may be amended. On the third reading it comes up for final consideration and may be defeated or passed by a majority vote, although amendments may be made by going into the Committee of the Whole. Moreover, the proposed legislation must relate to only one subject, while the title of the bill must clearly indicate its purposes. This procedure is in striking contrast to ~~the~~ the slipshod and careless manner in which Congress legislates as pointed out later.

#### Detection of the "Grade Crossing" Monstrosity

There was one bill, however, that did not attract attention until it was called up in the House for second reading on February 14, 1889. It had a deliberately misleading title as follows: "A bill to insure public safety by regulating grade crossings in cities of the first and second class." This measure being limited to Philadelphia and Pittsburgh was of concern to comparatively few members. Moreover, it was in line with the efforts to do away with the many casualties at railroad crossings in the larger cities; therefore, it was accepted, at its face value, as a wise measure.

When the bill was called up, I happened to read its provisions because the city of Allegheny that I represented in part was soon likely to be consolidated with Pittsburgh. It would, thereby, come within the scope of the proposed regulation. I discovered almost immediately that the measure should have been

entitled, "A bill to prevent the entry of new railroads into cities of the first and second class." For the bill contained a section exempting existing railroads from the other provisions of the act. At the same time, it required new railroads seeking entry into these cities to elevate their tracks at the municipal boundaries for a distance of ten or fifteen miles, at an enormous cost. Furthermore the bill did not give to the new systems terminal facilities within the business portion of the town. Thus, it effectually barred competitive lines in the future.

This scheme was a good illustration of corporation control of the Legislature and of an attempted deception by a cunningly devised and apparently harmless title. The immediate beneficiaries of the act would have been the Pennsylvania, the Reading, the Pittsburgh and Lake Erie<sup>Erie</sup>, and the Baltimore and Ohio Railroads; the last one, by the way, was represented by my firm as General Counsel in western Pennsylvania. Except for the first road mentioned, the other lines were inactive in promoting the measure at Harrisburg.

Duplicate

**Defeat of the Grade Crossing Monstrosity.**

House Bill, No. 52, was considered the greatest corporation grab of the session. Owing largely to the courageous speeches and effective work of Mr. Shiras, the taxpayers of Pittsburgh, Allegheny and Philadelphia have been saved millions of dollars, and their communities freed from a measure that made new railroad enterprises an impossibility. Neither threats directed against his own bills or spacious pleas deterred him from doing his duty in the hour when the public slept and the enemy occupied every post. The following communication from one of the county's reliable and zealous citizens bears testimony to the narrow escape the county had from first being robbed and then imprisoned:

John Hood, Esq., Member of the Feed and Flour Exchange.

"As a member of the Joint Committee from the Chamber of Commerce and the Feed and Flour Exchange, sent to Harrisburg to assist in the defeat of House Bill No. 52, I take great pleasure in having an opportunity to say a few words in commendation of Mr. Shiras' valuable service while a representative at Harrisburg. Accustomed as I am to notice all movements that have had any bearing on the commerce of our City and State, I became interested in House Bill No. 52, purporting to be for the 'protection of life and property in cities of the first and second class.' This measure was in fact, a scheme to prevent the building of any more rival roads in the State, and further, to compel the cities to spend millions in the behalf of existing corporations. In the language of the Philadelphia Board of Trade it would 'as a law deny all new railroad companies practicable access to the cities of Philadelphia and Pittsburgh, and the bill should be entitled a law to forbid competition with established roads.'"

"It provided that the cost of constructing the necessary under-grade or overgrade crossings 'should be equally divided between the railroads and the city,' and that the consequential damages be summarily divided—which might cost MILLIONS OF DOLLARS IN TAXES. New roads were to pay all expenses, and besides be denied necessary terminal facilities."

Mr. Shiras, with the honest convictions that the Shiras family possess, and with the keen appreciation of the great injury the bill would inflict upon his constituents, as well upon the whole State, sounded the alarm the instant the nature of the bill was detected. The cunning deception and gross injustice of the bill fired his indignation, prompting him to a vigorous fight against the measure from its discovery to the final defeat in the Senate by one majority. While Mr. Shiras was not opposed to the prompt abolition of all dangerous grade crossings, but heartily in favor of the same, he regarded the text of this bill proposing the same as a mere screen for a measure gotten up and fostered entirely by and for corporation purposes. After Mr. Shiras' bitter denunciation of the bill on the floor of the House (and he alone spoke against it on final passage), the six large commercial exchanges in Philadelphia and the two in our city became aroused to the dangers that threatened the community. All passed resolutions condemning the bill and were seconded by similar resolutions from the Select and Common Councils of the City of Allegheny; therein the City's Representatives were requested to vote against any features of the bill pending 'that would in any way curtail the powers now possessed by the city or in any manner impose any cost upon the city in

changing existing grades, without the assent of the city.' Committees from all these exchanges visited Harrisburg, and by their united efforts, the pressure became too strong and the bill failed of becoming a law by just one vote. Mr. Shiras' vigorous efforts against the measure won the confidence of the large eastern delegations, and his zeal and faithfulness were so appreciated, that during the whole struggle they manifested more confidence in him than in their own representatives. His independence, courage and ability were qualities needed then, and should be acceptable to even a large constituency now.

"JOHN HOOD."

A PROPOSED ILLEGAL ACT AND ITS FINAL  
ENACTMENT IN THAT FORM

Illustrating some of the devious methods in legislation, I have another example in mind, much more flagrant in its deceptive form than the grade crossing bill. Early in the session, Mr. Emmanuel Wertheimer, a wealthy distiller, residing in my district, called upon me and asked whether I would introduce a bill permitting the incorporation of distilleries, saying that in this mission he represented these interests throughout the state. Although brewing companies could be incorporated, he pointed out that distilling companies with a much larger capital were not permitted to have this advantage. In case of death, insolvency or withdrawal of a member of a firm, he showed that reorganization was necessary while the issuing of securities and the incurring of contractual obligations were greatly impaired.

I told him I could see no good reason why distilling companies should not have the privilege of incorporating, particularly as the brewing interests enjoyed it. I asked that I be shown a copy of the proposed bill amending the general corporation act. I found on examining it that the title was vitally defective in that it did not show the nature of the amendment, while the body of the bill contained only the proposed amended section. This departed from the usual practice of setting forth the section as unamended followed by the new section containing the changes in italicized form, so that the members would know just what changes were proposed. I informed Mr. Wertheimer that I would not sponsor the bill unless it conformed to the constitutional requirements. He surprised me by saying that the bill could not be passed in any form other than the one proposed because it would arouse unnecessary antagonism. As I stood on my position, the proposed legislation was dropped for that session.

Two years later, Mr. Wertheimer was elected to the Legislature from Allegheny County. Almost immediately, he introduced the bill in the form in which it had

been presented to me. As a result of some skillful manoeuvring under the guidance of the state organization, it became a law and remained on the statute books until the adoption of the Eighteenth Amendment to the Federal Constitution, all the great distilling interests taking advantage of its provisions.

In consequence, for nearly thirty years, tens of millions of dollars were represented by capital stock illegally issued, but few seemed to be aware of the condition. The question of the legality of the act was never raised in the courts, where it would have been promptly overthrown as in plain and intentional contravention of several fundamental provisions of the state constitution.

EXPRESSIONS OF GOOD WILL BY THE AUTHOR'S  
COLLEAGUES ON THE JUDICIARY GENERAL COMMITTEE

The year following the conclusion of my brief term of service in the Legislature, I was unexpectedly forced into a campaign for the Republican nomination to Congress. Regardless of party affiliations, all my fellow members on the Judiciary Committee endorsed, in written form, my candidacy. This was a most unusual proceeding in a contest between candidates at a primary election. These endorsements are published here, not because they are commendatory from a personal point of view, but because these expressions of good will seem to indicate that the duties imposed on me in the Legislature had been satisfactorily performed. Therefore, they constitute a part of this record.

(<sup>u</sup> "Expressions" attached to original manuscript).

Chapter 849  
(Col.)

THE CONGRESSIONAL CAMPAIGN AGAINST COL. BAYNE & Col. Stone  
for the Republican nomination to  
Congress.  
MOTIVE FOR ENTERING THE CONTEST

When the time approached for the biennial primaries, I declared that I would not again be a candidate for the Legislature. This statement was made as a confirmation of my earlier declaration that I would serve but one term in the state Legislature. This simple notice occasioned a series of incidents which many people would have regarded as of no great importance. They were, however, destined to shape much of my subsequent career.

The publication of the story that I would not be a candidate was commented on by political friends of Judge White as evidence that because of their influence with the voters, I was afraid to run again. I knew that Judge White was not responsible for these assertions for reasons already given. But in view of the fact that I had suppressed much damaging evidence affecting the accused jurist, which had been unearthed on my return to Pittsburgh, I was greatly tempted to enter the field to make clear that I was willing to meet the issue.

While deciding what might best be done, I conceived the idea of showing my standing with my constituents by what would have all the earmarks of a bonafide candidacy for Congress against Col. Thomas M. Bayne. Col. Bayne, after his 18 years of service in the House had won a high position in his party, both in Washington and at home. The time was, as a matter of fact, much too brief to give me a fair opportunity for a successful campaign against Bayne, even if I could have defeated him under any circumstances. However, I hoped that by setting up delegates in my legislative district and securing their election by a substantial majority to make it clear for all time that I could have had a second term in the Legislature if I had wanted it.

THE CONTEST IN THE REPUBLICAN PRIMARIES AGAINST COL. BAYNE

The twenty-third Congressional District, changed lately to the twenty-ninth, was composed of the City of Allegheny and all the boroughs and townships north

of the Ohio River, containing a population of about 200,000. The majority of the voters resided in Allegheny. Consequently, this group dominated in the number of delegates to the Congressional Convention which was composed of about 140 members.

As the first step in my plan, I consulted with Major Kennedy who previously had had charge of my candidacy for the Legislature. He was much surprised at my motives but goodnaturedly gave way to my plan. It required but little time to select the delegates in the first legislative district, for most of them had represented me in the other contest. In a day or two, it became known that I had entered the Congressional primaries against Colonel Bayne, but no one except intimate friends knew my purpose. As Colonel Bayne had only once before been opposed for the nomination, the newspapers devoted considerable space to this unexpected development.

The Commercial Gazette, for fifty years the Republican organ in Western Pennsylvania, and a paper of commanding influence, announced that it would support Colonel Bayne in every possible way. The paper stated that it would regard the defeat of this Congressman toward the end of his brilliant career as a great calamity. One small paper of limited circulation was equally emphatic in my support. But the other papers were neutral and neither candidate could complain of not getting fair treatment from these latter papers.

As I expected, the great majority of the manufacturers and corporations, the farmers in the rural districts and the Civil War veterans gave almost unqualified support to my opponent. This, however, did not disturb me, as my campaign for delegates in the first legislative district would not be much influenced by the elements going to Bayne.

Then strange things began to happen. From all over the district came assurances of much popular support, composed of the younger Republican element with a large number of local politicians who, for one reason or another, were on unfriendly terms with the old-time Congressman who incurred, as is so often the case, the enmity of disappointed office holders and their friends. It was not

until James G. Wyman, Mayor of Allegheny, announced that he and his administration would do everything possible for me that coherence was given to the opposition. For Wyman was regarded as the most powerful and successful leader in his city, especially was he the controlling force in the party primaries.

This was followed by an announcement from the Allegheny River Improvement Association that every member in its ranks would oppose the nomination of Colonel Bayne, whom they charged with an habitual neglect of their interests. Thus, it will be seen that many of my unexpected supporters belonged to a class that did not love me more, but Bayne less. The upshot of it all was that three weeks before the primaries, a number of disinterested leaders declared that in all probability I could defeat Bayne. Thereupon, I was forced, with some reluctance, to set up delegates in every voting precinct in the district. Otherwise, I would be disregarding the wishes of many friends in addition to making it apparent that I was not a bona fide candidate, a fact which I had hoped to conceal at the beginning of my campaign.

- 4 -  
F. J. [unclear]

Low Selecting a Delegate in the ~~Third Precinct~~ [unclear]

In selecting the delegates in my home ward I had little difficulty except in the third precinct, known as "the rolling mill district." Here the voters were numerous, but the personal popularity of the delegate was more important than that of the candidate he represented.

I was advised to see the superintendent of a lead works a few squares from my house. Meeting him one evening at his office, the matter was taken up and he strongly advised the selection of one William Kelly, who, he said, had never been defeated in a primary election. While he was extolling Kelly's merits my adviser stopped in the middle of a sentence, his jaw fell and his eyes closed. A moment later he fell in a heap on the floor.

Greatly alarmed I sought assistance. On going into the hallway I saw a light beneath the opposite door and could hear a typewriter clicking in the room. Rapping on the door, I was at once confronted by a tall, thin and elderly female to whom I spoke of the superintendent's sudden illness, pointing to the fallen figure in the room across the corridor.

Without a word she returned with me, went to a closet and came out with a large dark bottle, which she shook vigorously. Then with great deliberation she removed the cork and approached the prostrate form. With her left hand she raised the head, and placed the mouth of the bottle to the lips. A gurgling sound was almost immediately followed by signs of returning consciousness. This mysterious female then returned the bottle

COLONEL STONE COMES TO THE FRONT

A week preceding the primaries, everything was running smoothly, and I had fair hopes of success, unexpected as it was. Then came another change in political currents, for I received an unexpected message from Colonel William A. Stone stating that he would like to talk over the political situation ~~xxxxxx~~ with me.

Up to this time, Colonel Stone, a former U.S. District Attorney and the head of the traction interests in Allegheny had, with his many political associates, remained neutral in this contest. For several years, Stone was regarded as one who desired to succeed Colonel Bayne but apparently feared to cross swords with such a powerful opponent. He was patiently waiting a break of some sort that would give him a chance. Therefore, I tried to guess the object of the visit.

Stone opened the interview with the statement that he understood that I would not be a candidate again for Congress in case I were nominated and elected.

to the closet, made a curt bow and retreated, closing the door after her. I wondered then, and have ever since, at her apparently inscrutable conduct.

Meanwhile my adviser had gathered himself up, again taken his seat, and was brushing off his clothes with a handkerchief, offering no explanation for what had happened, nor displaying any embarrassment. "As I said before", he continued where he had abruptly left off, "William Kelly is the man for you to select."

I hastened to assure him that I would get William Kelly if I had to adopt him into the family, and saying something about my wife not liking to have me stay "out after dark", or with some such excuse, I left much more rapidly than I had come. Reaching the street, I concluded that the superintendent knew a great deal about delegates, but that he had peculiarities not to my liking. So this was my first and only interview with him.

- 6 -

I told him that such was my resolve. He then asked if I would pledge my word to him that I would not run again. If I did this and agreed to support him as my successor, he stated that he and all his friends would support my candidacy and, thus, ensure my election.

I told him rather curtly that I could neither pledge myself not to run again nor to support him at the end of my term. In explaining this, I told him that my refusal to run again was made known to the public and not secretly to any individual. Moreover, I asserted that I could not agree to support him on my retirement from Congress because I believed my successor should be chosen by the Republican voters and not by any special influence I might possess in retiring from this office.

This attitude seemed to surprise my visitor, and he left in apparent disappointment. Two days later came the announcement in the press that Colonel Stone and his friends had come outstrongly for Bayne. It was not until later that I learned how the change had been brought about. At first I merely concluded that this ambitious gentleman concluded that he had a better chance to succeed Bayne in the near future than a younger candidate who might wish to continue on in the office indefinitely.

Then came another switch. Definite word was received at my headquarters that Mayor Wyman and his administration had agreed to remain neutral in the primaries. As many of my delegates in the City of Allegheny had either been put up by the Mayor or were receiving his ardent support, it required many changes in the delegates and much consequent friction.

#### HAD TO GIVE UP HIS STOLEN COAT

Notwithstanding the action of the mass meeting, the utterances of leading citizens, and a press united in its condemnation of Stone's dishonorable conduct, the latter refused to give up the nomination, saying that he had gotten the nomination fairly and was not to be influenced by the ill-tempered criticism of his political enemies.

Thereupon, a petition was circulated requesting the Republican County Committee to call a special meeting for the purpose of declaring Stone's nomination illegal and to call a new primary election to select a Congressional candidate. Pending the meeting and action of the County Committee, I went to my summer home on Lake Superior for a short stay. This gave me a much needed chance to rest and to decide upon my course should a new primary be held.

When Stone learned authoritatively that the County Committee was practically unanimous in finding the nomination illegal, he made the best of a bad situation by giving up the nomination and stating he would be a candidate at the primaries when called. While personally very much opposed to going into another contest, I realized that the request of my friends could not be lightly ignored. Moreover, I felt it was my duty to lead in an effort to punish those politicians who had so flagrantly betrayed their party.

By this time, I knew full well the nature of the ensuing contest and that I should have arrayed against me a vast sum of money on the part of those trying to save themselves from political extinction and a verdict of overwhelming condemnation. To avert this end, in addition to lavish expenditures there would be brought into play every political brick and every form of coercion likely to save the joint conspiracy of Bayne and Stone to achieve their ends. Had their been a direct primary and a popular vote, I would have had no misgivings, but under the delegate system where the nomination was made in convention, I saw many difficulties ahead. The new primaries were fixed for September, preceding the fall election by only a few weeks.

On my return from the West, I was glad to hear that Mayor Wyman and his administration had promised me their unqualified support. Although I did not have much faith in the mayor's promises, I knew beyond question that Wyman and Stone had long been bitter personal and political enemies. So, I felt at this time the breach would not be closed as it would greatly impair the mayor's prestige if he joined hands with his arch enemy. He would also lay himself wide open to the charge of corruption if he should switch his support now.

#### THE CLOSING DAYS OF THE CAMPAIGN

Two weeks before the primaries it became clearly apparent that my opponent based his hope of success on the lavish use of money and every possible form of coercion. It was plain that the Bayne-Stone combination had lost hope of winning by fair means and that, from their standpoint, they felt justified in saving themselves from political oblivion by any tactics, however despicable. It was not until weeks afterwards, however, that the full amount of money expended by the opposition was revealed. But I was satisfied that I had behind me the great preponderance of the voters, and it did not seem possible to thwart their wishes.

Then came disquieting rumors that Mayor Wyman was once more preparing to switch his allegiance. If these were so, it would affect the fidelity of many of my delegates in the City of Allegheny who had either been put up for me by the mayor or were otherwise under his control. Detectives were employed at once, and their reports showed beyond a doubt that the city administration, from top to bottom, was working for the Stone delegates. To correct this situation, I had many of these delegates retire in favor of more faithful substitutes; this, of course, caused much friction.

On the day of the primaries word came nearly every hour to my headquarters that certain of my delegates had disappeared from the polling places, leaving me unrepresented. After the close of the polls and the day following, it was learned that more than a dozen of my delegates, elected in my behalf, had transferred their credentials either to the losing delegate or to someone else favoring Colonel Stone.

Contests numbering more than thirty were started in precincts where I had been corruptly deprived of my delegates, either by a transfer of credentials or by the sending of my representatives out of town.

When the convention assembled in the mayor's stronghold, the City Hall, a motion was made to send these cases to the Committee on Contested Seats.

Many affidavits had been made bearing on the contests, besides the summoning of more than a hundred witnesses. When the motion referred to was made, the objection was raised to a hearing on the contest on the ground that the notices of such contests had been filed one hour late. It was alleged that the notices instead of being presented at noon the day before, had not reached the secretary of the district committee until one p.m. Thereupon, George E. Shaw, a brilliant young lawyer and a successful delegate from my ward, protested against the effort to block a hearing. He pointed out that at the previous convention, Colonel Stone had been nominated in violation of every fundamental rule governing the election or convention and that for these same forces now to raise a purely technical point of ~~no~~ moment would bring about a more corrupt nomination than on the first occasion. The Republican party, he avowed, could ill afford to have a convention again openly defy the wishes of a great majority of the voters, especially as none of the contested election cases was based upon a technicality; but upon charges of fraud; nor, he insisted, could so many contests have been filed sooner.

The chairman, however, decided that the rule having been invoked, it was for the majority of the convention to decide whether the time limit should be extended an hour. When such a motion was made, the fraudulently elected delegates were permitted to vote, thus assuring Colonel Stone a majority of four in the convention instead of being defeated by nearly fifty votes. Thereupon, on the request of one of my floor leaders, those delegates supporting me were asked to leave the hall so as not to participate in another fraudulent nomination.

The retiring delegates found the door leading into the hallway locked, with a policeman standing guard. On his refusing to open the door, a two hundred pound delegate of mine from the borough of Etna threatened to throw the policeman out of the window unless he opened the door. This delegate shouted that the officer had no authority to put the convention under arrest.

This threat sufficed, and as the door swung open, Chief of Police Murphy and two lieutenants were found on the other side of the threshold, tacitly showing how Mayor Wyman had been exerting his influence. As the delegates filed out a cheer was heard from the other end of the hall, giving evidence that Colonel Stone was once more the victor as the result of his utter disregard for fair play or decency.

#### NOMINATED IN ANOTHER CONVENTION

After my delegates had retired from the convention that had nominated Colonel Stone by strong-armed tactics, they assembled in a nearby hall. Here the convention was formally organized and my contesting delegates declared duly elected, thus giving me a large majority.

On motion, my name was presented as a candidate, and I was unanimously elected. Thereupon, I was sent for and addressed the gathering. After expressing my great appreciation for the faithful support given me in the campaign and for the honor tendered me in the newly organized convention, I declined to accept the nomination. In explanation, I pointed out that it was then too late to test the legality of my opponent's nomination in the courts. Were I forced to run as an independent candidate, I stated, it meant the election of a Democrat to Congress in a three cornered fight. This result should be avoided when the upholding of the tariff was a matter of vital economic importance to Western Pennsylvania as well as to the country at large.

I concluded by making three pledges: First, that Colonel Stone would be ~~opposed~~ opposed at the next election by a suitable candidate; second, that I would immediately take steps to punish criminally or otherwise those politicians who had been responsible for the corrupt control of the convention nominating Colonel Stone; third, that in behalf of our party I would try to bring about a better and more representative method of nominating candidates at the primaries. My express intention of punishing those guilty of fraud or coercion was greeted with prolonged applause.

Chapter 10

(Duplicate)

A SUCCESSFUL REFORM MOVEMENT

BEGINNING OF THE REFORM MOVEMENT

I was determined to secure the punishment of the men guilty of fraud and corruption in the two previous congressional primaries, but I quickly discovered that it was a difficult thing to bring about. I had ample evidence of the bribing and coercion of my delegates and the purchase of political leaders pledged to my support. But I found, in the course of my inquiry, that the existing primary regulations had no legal standing. They were extra-legal rules for procedure developed and accepted by the several political parties. Consequently, there was really no legal redress for frauds in a primary contest.

Realizing that any direct attack in the courts on my political foes was impracticable, I decided to take a different line. Vigorous protests were formulated and sent to Postmaster General Wanamaker against the activities of the assistant postmaster of Allegheny. This worthy's contribution to the conspiracy had been the purchase and transfer of credentials to defeated candidates for delegates. The protests were as effective as they were emphatic, and his removal speedily followed. A similar procedure in the case of the Collector of Internal Revenue for the district brought a sharp reprimand for his interference in the selection of party candidates. The reprimand was shortly followed by his resignation.

I was, however, much more interested in securing the punishment of Mayor Wyman, whose betrayal of my interests in each of the primary contests was currently believed to have been in consideration of a substantial price. As he was safe from direct attack, for the reasons stated above, I cast about for other ways of reaching him. Definite information bearing out current report of the mayor's corruption in the discharge of his official duties suggested the way. Deeming it inadvisable that I, or my political advisers, should press for an investigation, I set myself to the task of building up

a reform organization that would take the initiative .

Distrust of Mayor Wyman and his methods was so prevalent that there was little difficulty in enrolling some 100 prominent citizens of Allegheny in such a movement. The work was largely in the hands of well known young business men, with Robert A. Lea acting as temporary chairman. As it was my desire to keep in the background, I and my advisers saw to it that the membership contained none of my more active supporters. The immediate purpose was to secure an audit of the mayor's accounts. So great was the feeling aroused by his unsavory methods, that without any urging from us, the association pressed its demand for the audit with the greatest vigor on the select and common council of the city. These bodies alone, by joint resolution, could authorize the inquiry.

The majority of the councilmen were under the control of the mayor and his political associates, but the members included a number of men who were independent in their views and, also, possessed of great courage and integrity. Another group was susceptible to the influence of a movement such as we had put on its feet, particularly as I had strong endorsements from the press.

At the outset of the movement, I was requested the executive committee, because of my knowledge of local conditions and because it believed I would present the facts fairly and without personal bias, to prepare a series of bulletins outlining the purposes of the association. This I consented to do, with the understanding that it should not become known that I was the author.

Continued pressures from the association and the press soon resulted in the council's directing an audit of the Mayor's books.

#### REPORT OF THE AUDITORS

After a careful examination of the mayor's records, the auditors reported that the Mayor had obtained thousands of dollars by illegal methods. It was charged that he had been guilty of many cases of extortion through

the imposition of fines which he pocketed as a part of his compensation in the trial of cases. For instance, in directing a raid against alleged disorderly houses, he would fine the defendant in a nominal amount and then charge each with all the costs instead of pro rata. This excess, the Mayor would retain for himself. As the fines were small the defendants made no protest.

In other instances, the docket showed the defendant discharged on the payment of costs, while the mayor pocketed the fines not disclosed by the record. In some instances, the fines were split between the city and mayor.

After the auditor's report was taken up for consideration by the City Council, the Pittsburgh Leader, in its news column, reported the situation as follows

After these disclosures, I consulted with the District Attorney of the county who favored an immediate presentment to the grand jury. Furthermore, I engaged one of the leading criminal lawyers of the local bar to assist in the prosecution. The retainer that I paid him was afterwards returned to me by the reform association.

On the return of an indictment and the trial of the case, great interest was manifested throughout the community, for it was the first time that a mayor of one of our larger cities had been charged with extortion and embezzlement.

After a trial lasting nearly a week before Judge Kennedy, the sitting in the Quarter Sessions Court, the jury returned a verdict of guilty on all points. The Commercial Gazette, in an editorial, refers to the great benefit coming from this successful prosecution, as follows:

"Let it be understood from this time on that every job and jobber will be shown up. When men who ought to be doing time in the work-house or jail aspire to fill important and honorable positions, let them be told in plain English that they will not be permitted to take the oath of office, even though they succeed in having themselves chosen. Men who know they have been blackmailers, and who have condoned and tolerated crime for a consideration, may as well understand first as last that they will be brought up with a short turn in the courts if they persist in forcing themselves into positions that they have neither the ability nor the honesty to fill. Once establish this precedent and it will not be long until good men will come to the front and offer themselves for these positions of trust."

#### A REVEALING INTERVIEW

During the week following the conclusion of the case, the convicted mayor remained at liberty by a renewal of his bond pending the motion for a new trial. One morning the office boy told me, with an air of suppressed excitement that Mayor Wyman was in the waiting room and would like to see me.

As he crossed the threshold I noticed his changed appearance. And as he sank down in a chair I motioned him to take, it was plain that he had come to ask for mercy. Perhaps, I thought, he might reveal the record of

of his recent treachery. In a husky voice and with tears in his eyes, he spoke of his downfall and the shame that had come to his wife and children. "And all this," he said, "because friends that should have helped me have apparently rejoiced over my plight." Thereupon I interrupted him by saying, "The friends you refer to were Congressman Bayne and Colonel Stone, two of your former political enemies. These two, having gotten out of you what they wanted, are doubly pleased that you are headed for prison."

At these remarks of mine, the large and bulky figure cowered in the chair. All he could say was, "I want help from the one whom I hurt."

This scene took me back some years before when, near the shores of Lake Superior, I had trapped a huge timber wolf, the slayer in its day of hundreds of deer. As I stood close by the trap, the animal with bloodshot eyes seemed to be appealing for mercy. The mercy came in the form of a bullet through its brain. In trapping the Mayor I could not thus summarily dispose of him. Therefore, I figured on receiving information that could come only from his lips. Before fixing upon terms of surrender, I asked him just what he wanted me to do. To this, the Mayor responded that he hoped I would see Judge Kennedy, who presided at his trial, and that I would suggest to the court which had already intimated a sentence to the penitentiary that justice would be done if he were sent to the workhouse instead. Otherwise, the Mayor pleaded, he would lose his right of citizenship, becoming a social and political outcast the rest of his life.

I then explained that there were a number of things which must be done before I could think of doing what he wished. I asked him if he would make a clean breast of his doings in the two Congressional primaries and if, after going so, he would resign from office without taking an appeal to the higher courts. He evidently realized that I could not be placated in any other way. Thereupon, he told me how he had received \$3000.00 from a representative of Congressman Bayne on the condition that he withdraw his support from me.

And, he added triumphantly, he was not required to oppose me openly. Again I interrupted him by saying that what he told about the first campaign did not apply to the second one against Colonel Stone in which he had not only deserted me but actually supported my opponent in every possible way. "What did you get for this?" I asked. After a moment's hesitation, he said, "I got \$15000.00 in cash for myself and \$5000.00 for certain police officials. In addition, I arranged for the payment of a considerable sum of money to certain delegates of yours." Minor details were then given which need not be mentioned here.

When Judge Kennedy learned of the Mayor's confession to me and his agreement that he would resign his office and stand for sentence without an appeal which might mean a year's delay, the Judge sent him to the workhouse out of consideration for what he had done and agreed to do.

#### BEGINNING OF A NEW REGIME

With the Mayor duly incarcerated and his office vacated, a special election was called for the selection of a successor. With the opposition badly demoralized and the leaders fearing exposure and possible prosecution, no counter movement was started against the election of my uncle and campaign manager, William M. Kennedy. His later induction into office put an end to the old Wyman machine. And all the time, Messrs. Bayne and Stone kept discreetly silent.

It was thereupon conceded that at the next Congressional campaign I would have little if any difficulty in disposing of Colonel Stone. But the question naturally arose as to why I should be such a candidate when I had originally no desire to go to Congress and had only been forced into the previous contest by a strange combination of circumstances.

Most of my friends and a good portion of the public took the view that I should enter the contest once again as a matter of personal and political

vindication. However, this question was solved by an unexpected event, to wit, the nomination of my father as a Justice of the United States Supreme Court by President Harrison. This meant the breaking up of our law firm, with the head of it in Washington under a life appointment and myself headed toward the nation's capitol as a member of Congress. To make a long story short, I waived aside any possible political preferment and contentedly settled down to the practice of law. And I determined, thereafter to stick to this resolve.

### THE ATTEMPTED IMPEACHMENT OF JUDGE WHITE

The most interesting and exciting event during the writer's service as a member of the legislature was his effort to have Judge J. W. White of the Common Pleas Court, No. 2, removed from office by impeachment, based upon the charges of malfeasance in the discharge of his judicial duties, during the previous year.

In 1887 the legislature passed the Brooks High License Law, which in addition to requiring the payment annually of \$1,000.00 also placed the granting or refusal of all license applications in the hands of the judges of the Common Pleas Court of each county.

By the time the legislature had convened in 1889 it was the general opinion that this new law had been a great success, not only in the enrichment of the county treasury, but more particularly in the large reduction of the number of licenses heretofore granted and in the selection of a better class of licenses. Heretofore wholesale and retail liquor licenses were granted practically to all applicants and on the payment of a small fee with the result that in Allegheny County and in other counties having a large population thousands of licenses were granted, many of them in residential districts, and others crowded into the business and industrial sections. Such competition brought about the violation of practically every law regulating the sale of intoxicants. Under the new law it was necessary for each applicant to show that his license was necessary for the convenience of those living in the vicinity, and under this provision the judges usually refused a license in purely residential districts besides giving preference to hotels and restaurants bearing a good reputation, or to those dealers whose reputation and location justified their selection. In Allegheny County the

licenses were reduced about two-thirds over the previous years and while this naturally caused much resentment among the rejected applicants and while there were others who contended it was not a judicial function of the courts the great mass of the people was entirely in accord with the operation of the law, and it may be noted here that the law remained on the statute books with no material changes until the enactment of the Eighteenth Amendment to the Federal Constitution prohibiting the manufacture, sale and transportation of intoxicants.

Disquieting Rumors are Heard

The annual session of the License Court of 1889 in Allegheny County was presided over by J. W. F. White, one of the oldest and most experienced members of the local judiciary. While at the public hearings at this session of the court it was surmised from the actions of Judge White that the number of licenses to be granted would be materially reduced over that of the previous year. This proved to be the case for only about 100 licenses were granted, but what caused the greatest surprise was the refusal of licenses to well-managed hotels and restaurants or other suitable applicants and the giving of licenses to new applicants or to those least worthy; some of them being in residential sections. Except in the case of extremists the press and the public unitedly condemned Judge White's actions. It was seen at a glance that great fortunes would be rolled up by the few possessing a license and that the matter of public accommodation had been largely ignored. As the law, gave each licensed judge the arbitrary right to grant or refuse a license there was no remedy available in meeting this unexpected situation. After the License Court had adjourned, it was disclosed

by the records that nearly one-half the successful applicants had been represented in court by a nephew of Judge White, and many were the surmises as to the large size of the fees collected by this lawyer. Until this disclosure the daily press had treated Judge White leniently, several giving expression to the belief that this judge who had heretofore occupied an exalted position on the bench had been unduly swayed by his abhorrence of the liquor traffic, and that he had taken advantage of an opportunity to give expression to this belief by granting only a few licenses, and those who criticized him thought it would be much better if he had granted no licenses and thus stood upon the interpretation of the law that he possessed the power to make the county dry. After it was found that the court had indulged in rank discrimination in the granting of licenses to those represented by a relative of the judge criticism both public and private became rampant, but as no demand was made for impeachment proceedings it looked as though the situation would gradually quiet down.

One Saturday in March when I was spending the day in my law office after leaving Harrisburg the night before I was visited by a member of the law firm of which the senior member was the attorney previously mentioned. He told me that dissensions had arisen in the firm over the division of the fees in License Court matters. He alleged that a note for \$5,000.00 payable by Judge White to his nephew had been cancelled, and that this amount had been deducted from the license fees before apportioned the firm, and further, that large sums of money <sup>had been</sup> paid by other successful applicants to the senior member of the firm where he had not appeared on the court record as counsel, but represented

them secretly; so far as the public was concerned his connection with these cases was known by the court.

After these disclosures were carefully considered I thought it my duty to prepare a resolution of impeachment to be presented in the lower House, immediately upon my return to Harrisburg. As in other states the sole power of impeachment was possessed by the House of Representatives, acting in the capacity of a grand jury in determining whether an accused public official was apparently guilty of the charges presented and if so satisfied the proceedings were then transferred to the Senate to be tried by that body, a conviction requiring the concurrence of two-thirds of the members present. Since the Legislature was expected to adjourn within two weeks little time was left for the preparation of the articles of impeachment, and their presentation and passage by the House. Should the lower body act in the affirmative the Senate, being a continuing body could sit in extra session to pass upon the charges preferred in the impeachment. I considered it a wise policy not to give the press or the public any notice of my intention, for the charges were bound to cause great excitement in the community and I should be importuned on all sides by those opposing, or supporting the proceedings, and to no good purpose. To the preparation of the impeachment papers I gave as careful consideration as was possible under the circumstances. On Wednesday afternoon, May 1st, I left for Harrisburg with a view of presenting the resolution in the House the following morning and believed by that up to that time no person in public or private life had an inkling of what I intended doing. In this view I was somewhat mistaken for at two o'clock in the morning, May 2nd I was roused by a rapping on my bedroom door, and rising, I was confronted

by Robert Simpson, the Capitol correspondent of the Pittsburgh Dispatch. He then said he had just received a telegram from his paper stating that at the morning session of the House it was my intention to introduce a very important resolution, but that the publishers did not know the character of it, and for him to find out at once, if it were possible. Simpson and I had been friends for many years and I had implicit confidence in his integrity, thus feeling that any information I gave him would be kept in strictest confidence. I then explained to him my intentions, and that I believed he had earned the right for a "scoop," so dear to newspapermen. It was arranged that his newspaper could issue a special edition on or after nine o'clock that morning, when the House would be in session and when I expected to introduce the resolution on its convening. In the concluding two weeks of the session the Legislature met an hour earlier. After the speaker had taken his seat about five minutes elapsed before the House was called to order. At which time I rose and gave notice I had a resolution to offer. As the resolution was being taken by a page to the Speaker in order that he might present the same to the House I was hurriedly approached by Majority Leader Andrews, who asked me what was the nature of the resolution, as he had just been informed by wire that the Pittsburgh Dispatch had posted a bulletin giving notice of an extra edition containing an account of the proposed impeachment of Judge White. Since nothing could then be gained by concealment I did not contradict his information. The Speaker after personally examining the resolution prepared to read the same, whereupon Andrews entered an objection and asked that it be passed over under the rules.

This was done, for the consideration of every resolution required unanimous consent except on the Monday night calendar, when resolutions could be passed or rejected only on a majority vote. The speaker added that the resolution might be presented again at the Monday evening session when resolutions were in order. This development was not unexpected, although I thought much of the blame could be placed on my shoulders for not having the announcement of the resolution until I had sufficient time to get it before the House. I was not discouraged, however, for I felt that in the four days intervening before the resolution could be considered that I would have the needed time to take a test of sentiment of the members and to arrange for the proper presentation of the subject. With my consent the resolution was given to the members on the floor, so that they might become acquainted with its object. In the middle of the afternoon a large number of the extra edition of the Dispatch reached Harrisburg so that before evening every one interested in the proposed impeachment proceeding had full information on the subject.

A reduced facsimile of the paper's announcement of the proposed impeachment follows:

Preparations for the Consideration of the Resolution.

It seemed the part of wisdom to remain continuously at the capital during the few days before it could be offered again under the rules of the House. I consulted freely with most of the members and felt satisfied that the resolution would pass if voted upon by two thirds of the House. The Democratic members lined up solidly behind me, due partly for political advantage. The country members who believed thoroughly in a new license laws, instead of being antagonistic took the position that Judge White's arbitrary conduct had reflected upon the wisdom of this legislation, while the city members from Pittsburgh and Philadelphia so subject to control by the political leaders showed signs of breaking away from this domination regarding the actions of the court as that of a fanatic. Doubtless this situation was soon discovered by the floor leaders and those representing the state organization. They argued with me that it was bad politics to try a prominent republican judge on the eve of the gubernatorial election which for various other reasons was involved in much doubt. Making no headway in these overtures they devoted the intervening time to some plans for circumventing it. On the second afternoon word came to me that Judge White had arrived at the Pennsylvania station and was in consultation with his close friend James L. Graham, then representing an adjoining district in the City of Allegheny. When this visit became known majority leader Andrews sent word to Graham that the accused judge must leave town at once or he would defeat the efforts of any of his friends to take care of his interests.

When Monday, May 6, came around I was sure that I had enough support lined up to carry my resolution. At the afternoon session, however, Mr. Graham rose in his place about 5.30 p. m. and moved that the House should take a recess until 7.30 p.m. The motion was second. The object was evidently for the purpose of defeating the regular evening session by continuing the afternoon calendar, thereby preventing the consideration of any or all original resolutions in order under the rule of the House at each Monday evening regular session. At my request my friend and colleague, Hon. Charles W. Robinson, hastened to his seat and demanded a roll call on said motion, the same being duly seconded by at least five other members; but the demand was ignored by the presiding officer, the Hon. Henry Hall, and on the viva voce vote Mr. Robinson demanded a division to determine the sentiment of the House. The request was also ignored, and the House was declared to have taken a recess, without either division or roll call, and in the face of a determined and very apparent request on the part of many members of the House.

By taking the said recess the consideration of original resolutions was not in order at any time before the final adjournment of the legislature, on May 9th, this session being the last one, under the rules of the House for their consideration.

Mr. Robinson later told me that in a conversation with Mr. Hall a month later, in the city of Pittsburgh, the latter informed him that it had been arranged that Mr. Hall should take the chair that afternoon and that at 10 minutes to six Mr. Graham would make the motion above referred to, and the same was to be put immediately and declared carried on a viva voce

vote; that this program was adhered to by him in ignorance of a proper understanding of the matter, and that he was sorry to have been a party to a procedure that prevented his friend, Mr. Shiras, from stating his position or ascertaining the sentiment of the House on the resolution.

Some Subsequent Discoveries

When the effort had failed to have Judge White investigated by the legislature, I went to my summer home on Lake Superior for a few weeks, glad of the opportunity to free my mind from the worry of the preceding weeks.

On my return I concluded that I should take some further steps in the vindication of my course, even though I had no immediate intention of renewing my attack.

Although I was satisfied that the means taken by the Republican leaders to prevent an investigation as a wise political move in view of the approaching gubernatorial election, I felt certain that the means taken to cover up this scandal had been directly instigated by Judge White's personal friends, and that he had been a party in the execution of the scheme.

Recalling that Judge White had visited Harrisburg the day following the introduction of the impeachment resolution and that he had been in consultation with representative James L. Graham, a personal friend, living in a district adjoining mine, I felt certain that incriminating correspondence had passed between the two.

Under this belief I called at the Graham home one night and after a few minutes general conversation I said to him with more assurance than I really felt: "You received a couple of letters from Judge White during the week I tried to have him investigated. I would like to see them." Apparently startled

by this request he made no denial, saying the letters could not be shown to me as they were confidential. I agreed with him that under ordinary circumstances that he was right, but that in view of what had happened at Harrisburg this correspondence was material in proving a conspiracy between himself as a member of the impeaching body and the accused. Which being the case I had the right to have each of them indicted for such an offense. If the letters were surrendered to me, I assured him, they would be returned with a promise on my part that this correspondence would not be published until after the Judge's death, if at all, for my sole purpose was to be in possession of records justifying my course in the legislature. This threat had an immediate effect and I was given two letters that bore out my suspicions. In the first letter Judge White thanked Representative Graham for the plan he had in mind of defeating the investigation, and he continued that he hoped it would succeed. In the second communication following the parliamentary trick, preventing the consideration of the impeachment resolution, the accused Judge expressed his heartfelt thanks for the successful manner in which the plan had been carried into effect. Photographic copies were made of these letters and are now in my possession. When later on Judge White learned what I had done he wrote me at length saying he hoped that I would not stir the matter up again and closed with the assurance that he had never doubted my honesty of purpose and that he desired to be a friend of mine hereafter. This was such a complete surrender and such a clear admission that I had been justified in my conduct that it softened my heart so far as the future was concerned. This letter is also in my possession.

### FRIENDSHIPS OF THE ROUND TABLE

In those larger cities in which the county court house happens to be located, it is customary for members of the bar to have their offices in the immediate vicinity of the courts. As a result of this little groups take their lunch in a conveniently located club, hotel or restaurant, such association often continuing for many years. The little set of which I was one originally consisted of only five or six, ranging between twenty-five or thirty years of age. Gradually the members increased to more than a dozen. The first few years we had agganged for us a round table so suitable for varying numbers and in the downstairs dining room of a new hotel, and here between twelve and two o'clock, the majority of the members came regularly. Later we all became members of a new club where the dining room was on the upper floor, and where we continued to gather for more than twenty years, death occasionally removing one and another taking his place. While in no sense a selected group it was natural that it should be composed of those more or less associated in the practice of the law, or by reason of congeniality.

As might be expected many of us possessed individual characteristics which might or might not be agreeable to the group as a whole. Selfishness, egotism, undue prejudices and eccentricities in manner or speech was not unknown, but with the result of constant association our dispositions became molded in better accord, for no individual was long permitted to evidence, any foible, mannerism or other peculiarity unacceptable to the rest. Even when some of the members were elevated

to the local bench freedom of expression continued to the very decided advantage to the jurists, who so often prove to become brusque or dictatorial when separated from close contact with members of the bar. This rubbing down process soon resulted in each of us giving up peculiarities unfavorable to the harmony or disposition of the group, and has, I think, had much to do with the success of many of them in later years. A glance at the careers of the various members after twenty-five years of intimate contact therefore may become interesting. Of the fourteen that daily gathered about the Round Table except when professional duties prevented, the following is the record:

Two who had been younger associates in the distinguished law firm of Knox and Reed had become senior members; another became general counsel for the Pennsylvania Railroad, while another accepted the position of professor of law in the University of Pittsburgh, several of them declining elevation to the bench. The remaining nine, all of whom entered public life are designated by numerals and not by names.

1. United States District Attorney, judge of the court of Common Pleas and later a member of the Federal District Court;
2. Thirty years a member of one of the Courts of Common Pleas;
3. Legislator and member of Congress;
4. Twenty-five years a judge of the Orphans' Court;
5. Attorney General of the United States, in the cabinets of McKinley and Roosevelt, United States Senator and later Secretary of the State. Superior Court;
6. Judge of the Court of Common Pleas and later presiding judge

of the State Superior Court;

7. Judge of the United States District Court;

8. Legal expert and chairman of the Board of County Appraisers, and

9. A member of the legislature, Judge of the Court of Common Pleas and Chief Justice of the State Supreme Court.

This brief summary would seem to indicate that the influence of the Round Table had helped play its part in preparing the members for a useful and diversified public service.

However, the influence of the Round Table in keeping alive the memories of the past, and in the welding of lifelong friendships has been more esteemed by most of us than public honor, so fleeting in comparison to enduring ties between one's fellow men.

THE CONTESTED ELECTION CASE OF CONNELL vs. HOWELL IN WHICH THE

AUTHOR PARTICIPATED

Events leading up to the Case

Following the nomination of candidates by the Citizens' party, and the endorsement of the same by the Democratic organization of Allegheny county, objections were filed to this endorsement by a Democrat holding office under the Republican postmaster of Allegheny city, and a hearing on this issue was fixed at Harrisburg, where such matters were decided by the Dauphin county court.

I was requested to take charge of this matter, and went to Harrisburg, where I engaged well known legal counsel to appear in our behalf. While in the court room, awaiting the call of the case, I was much interested in a similar issue then being considered by the judges. At a Democratic Congressional convention in the 10th district, William Connell, a Republican, was endorsed over George Howell, the Democratic aspirant. The evidence showed plainly that Connell had debauched this convention by a lavish use of money and by various coercive methods. So evident was this that the court announced before adjournment that the Democratic nomination received by Connell was fraudulent. The court failed, however, to give the nomination to Howell, so that he was forced to run on an independent Democratic ticket.

When the Citizens' party case was called, the court with equal promptness held that the Democratic endorsement was legal, and dismissed the proceedings.

After the congressional elections I found that Howell, the independent Democratic candidate, had been returned elected by a majority of more than 500 votes over Connell, and had been duly seated. Thereupon Connell began a contest against his

successful rival on the ground of fraud or other irregularities. This contest was designedly referred to the Committee on Elections No. 3, composed of six Republican members friendly to the contestant who had served in two previous terms, while the minority was made up of three southern Democrats from South Carolina, Mississippi, and Texas, whose appeals for honest elections were sure to be regarded as a joke by the Republicans of the House.

Active on this committee was a Pennsylvania member, H. Burd Cassel, and a close personal friend of the contestant. This member, whom I knew very well, began soliciting votes among the Republican members before the case had been decided by the committee. In speaking about the matter to me, he said, it would be a nice thing to give the "old man" his seat for a Christmas gift, and that he was going to see "Uncle Joe" about hastening a favorable report from the committee. I told my solicitor that I could not promise to vote for the seating of Connell, as his Democratic opponent had been fairly elected and would probably have received a majority of 5,000 votes if he had not been deprived of the regular party nomination by the unfair means used by the Republican candidate, since the Democratic candidate for governor had carried this Congressional district by a majority of about 6,000. In concluding this interview, I said that I did not expect to take the floor when the contest came before the House, for my motive might be misrepresented owing to Democratic support I had received in my own case.

In the course of a few weeks the election committee, by strictly party vote, awarded the seat to the contestant; and being a privilege issue, it was put on the calendar for immediate consideration. By this time it had become known generally that

Mr. Connell, the millionaire coal baron, had spent over \$100,000 in presenting his evidence before the committee, calling some 6,000 witnesses with a view to muddling up the contest; while his opponent, a country schoolmaster, was unable to summon wholesale evidence of this kind on account of the prohibitive expense. The committee, on finding that a number of fraudulent or otherwise illegal votes had been cast, did not attempt to determine for whom such ballots were cast, but merely assumed that Howell had been the sole beneficiary of these illegal ballots, and in this way the majority of the committee found that Connell had been elected by a little over 200 votes.

Such a method of procedure was of course preposterous.

The debate on this contest lasted several days, the speakers being divided on party lines, and it was evident that the case would be decided in the same partisan way unless something could be done to thwart this wrong. Finally I asked John Dalzell and several other party leaders to prevent the unseating of the duly elected Democratic candidate, saying that it was a farce for us to protest against the unfair methods in the South, and at the same time try to convince the public that a millionaire candidate had been defrauded of his seat by a country schoolmaster in our own state. Each of these replied that the committee had heard all the evidence and it was therefore a safe rule to abide by their findings, and that, as a new member, I should not run counter to this custom.

When one hour remained before the taking of the vote, I could stand it no longer, and under the time limitation rule covering the concluding arguments, I took the floor. Up to this time little general interest was being taken in the argu-

ments, for with the large Republican majority, and no apparent split in the party lines, the result seemed certain. On it becoming manifest that I was speaking in opposition to the committee's report, I was asked to occupy the middle aisle, while the leading partisans on either side grouped themselves about me. As a result of this excitement I felt some concern, but under the time allowance hoped to be able to explain why I intended to cast my vote for the sitting member. When my time expired it was renewed repeatedly. Thus I was able, under many interruptions, to present my views, and to take good naturedly personalities, although, of course, I was far from satisfied with the manner in which I was able to meet and parry the queries designed to embarrass me in every possible way.

Ten minutes before the vote was taken, and just after I concluded speaking, Wayne Parker, a member from New Jersey, came to my desk saying that the New Jersey delegation was going to vote solidly for Howell. I thereupon begged Parker to take a few of the remaining minutes in behalf of the sitting member, and while he hesitated, Wm. M. Lanning of New Jersey said he would speak, and did so effectively, for his regularity could not be questioned. It may be stated that the speaker's probity and judicial fairness was evidenced a few years later when President Roosevelt appointed him a Federal judge.

I now quote from the Congressional Record a portion of the debate in the contested election case, under date of February 9th and 10th, 1904:

CONTESTED-ELECTION CASE-CONNELL VS. HOWELL

Mr. DRISCOLL. Mr. Speaker, by direction of the Committee on Elections No. 3, and in pursuance of a notice given last week, I now call up for present consideration the contested-election case of William Connell v. George Howell, from the Tenth Congressional district of Pennsylvania.

The SPEAKER. The Clerk will report the resolutions.

The clerk read as follows:

House resolution No 195.

Resolved, That Hon. George Howell was not elected a Representative in the Fifty-eighth Congress from the Tenth District of the State of Pennsylvania, and is entitled to a seat therein.  
Resolved, That Hon. William Connell was duly elected a Representative in the Fifty-eighth Congress from the Tenth District of the State of Pennsylvania, and is entitled to a seat therein.

Mr. DRISCOLL. The time to be equally divided and to be controlled by the gentleman from Mississippi on his side and by myself on this side.

(The two days debate on this subject is omitted except as it relates to the author's participation therein, which follows:)

Mr. McLAIN. Mr. Speaker, I yield fifteen minutes to the gentleman from Pennsylvania (Mr. Shiras).

Mr. SHIRAS. Mr. Speaker, I have examined the majority and minority reports in this case. I have also looked over the evidence that was considered material, and I consulted at a considerable length of time with the majority of the members that composed the Republican majority in this committee. Notwithstanding the consideration given to the report of the majority, I find I am unable to agree in the recommendations made by my party colleagues. In the first place, permit me to say that I do not question for an instant the sincerity of the gentlemen who compose the majority of this committee. Anyone who listened to the remarks of the gentleman from Iowa (Mr. Birdsall) and the chairman of this committee, the gentleman from New York (Mr. Driscoll), must be impressed with the fact that these men believe they are right.

They are also to be credited with the fact that they had to deal with one of the most difficult cases in point of extent of testimony and number of witnesses of any case that has been presented here for years.

Now, I do not question their sincerity; and, under ordinary circumstances, I take it, it is the duty of Members of this House to follow the suggestions and recommendations made by the majority

of the committee that has examined a case of this kind. While, therefore, I do not question the sincerity of my fellow-members who wrote the majority report, neither do I question very seriously their judgement up to a certain point. When you come to examine the majority report down to a certain point, it will be found substantially right, but when they become impregnated with the germs of "aliundesism" they seem to act, as it appears to me with utter disregard to the law that should control in a case of this kind.

In a few moments I shall refer briefly to the question of aliunde evidence; but before touching upon that point I want to say to my Republican colleagues that this is admittedly a close case from the standpoint of the majority. There are 6,500 witnesses and 2,500 pages of testimony, and doubtless thousands and tens of thousands of dollars were spent. And what was the result? The majority find a plurality of 223 votes in favor of the contestant out of a total of 28,000 votes cast in that district. They have taken the position, necessarily, that if there had been a change of 112 votes in that district Mr. Connell-the contestant-would have been defeated.

Now, gentlemen, you must remember that while that is conceded by the majority of the committee representing this side of the House, the Democrats do not concede that the result was so close. You must take the situation as it existed there; and there are equities in the case that seem to me to throw a great deal on the situation. In the first place, we are told that we ought to follow the majority of the committee because of the great volume of testimony taken. Now, gentlemen, let me tell you those are wooden guns piled up there. If you have listened to the debate up up to the present time you must have been satisfied of the fact that the case rests upon a very few pages of testimony and several very simple propositions of law.

The testimony relied upon here is substantially quoted in the minority report. If any Member will take the two reports and go off quietly by himself for an hour and analyze this case, he will come to a conclusion without the necessity of looking into the testimony further; or if he has listened to the debate of yesterday, he must in the same way have reached a conclusion as to how he should vote.

Now, the idea of any Republican here trying to hide behind that mass of testimony, and saying, "I am unable to delve into all the depths of this case and come to a conclusion, and I can satisfy my conscience by following the lead of this committee," is, it seems to me, fallacious. Some gentlemen on this side undertake to throw the responsibility on the committee in that way. They say: "I believe the members of the committee to be honest, conscientious men. They have gone through this mass of testimony and we can not do better, under the circumstances, than follow their conclusion."

On that point I wish your attention. The determination of this case does not require the consideration of the testimony to any great extent. The testimony upon which the issue here turns has been repeatedly read and referred to on both sides of the House.

Mr. DRISCOLL. Does the gentleman mean to say that all the material evidence has been read?

Mr. SHIRAS. All the material evidence, the evidence that you rely upon, has been mentioned, and its character analyzed and presented to the House.

Mr. DRISCOLL. We could not do that in a week.

Mr. SHIRAS. When you come to consider the questions of law involved here, if you are inclined to give due weight to those questions, nine-tenths of this testimony must be ruled out absolutely.

Mr. CASSEL. Has the gentleman read the briefs of the contestant and contestee in this case?

Mr. SHIRAS. I have read the report very carefully three or four times and have consulted with practically every member of the majority of the committee except Mr. Driscoll, whom I tried to see several times. I say the report-

Mr. CASSEL. I am speaking of the briefs which set forth the case as presented by the two committees.

Mr. SHIRAS. As I have already said, I have not attempted to read all the testimony in the case, because I have taken the word of the majority as well as the minority of the committee that the material evidence on which they rely has been presented.

I think it can be shown that the great mass of this testimony must be ruled out, not only because it comes under the head of aliunde proof, but because this aliunde evidence can not be applied, owing to the failure to connect it up with the votes thrown out; and when you come to consider the matter, therefore, it will be found that a thousand pages of this testimony cannot be properly considered.

Now, let us look at another feature of this case. The Tenth district of Pennsylvania in 1902 was Democratic. The Democratic candidate for governor carried it by some five or six thousand majority; and before the election every Republican who knew anything about the state of the case in that district knew that there was very little question that the Democratic Congressional candidate would carry that district, although ordinarily a Republican district.

Consequently, the Democrats knowing this, and knowing that they had more than a fighting chance, there was every reason in the world why they should put forward a representative Democrat to lead them to the victory which would surely come to them in that district when the votes were cast in 1902.

Mr. GILBERT. What were the changed conditions that led people to think it would go Democratic?

Mr. SHIRAS. There was a series of labor strikes growing out of the coal business there, and Mr. Connell was one of the leading coal operators, and it was natural under those conditions to expect reprisals.

The county of Lackawanna gave the Democratic candidate for governor between five and six thousand majority. Now, the Democrats, knowing that this was coming, saw their duty, and they therefore expected to nominate a Democratic candidate, because they expected to elect their candidate.

Now what happened? The kind friends of the contestant went into a Democratic convention, disrupted it, and, with a very small minority of the convention apparently, got the Democratic nomination. Although he is coming here to-day charging a fraud against the Democracy, he received and filed a Democratic certificate of nomination in Dauphin County. Mr. Howell, who had the majority of the convention, also received a Democratic nomination, and that was filed in Dauphin County. A contest arose, and the courts of Pennsylvania decided that the nomination given to Mr. Connell was illegal and threw him off the Democratic ticket.

Mr. SWANSON. Do you mean he claimed to be the Democratic nominee?

Mr. SHIRAS. Yes.

Mr. GILBERT. What proportion of that convention voted for Mr. Connell?

Mr. OLMSTED. Will my colleague permit a question?

Mr. SHIRAS. Yes.

Mr. GILBERT. What proportion of the Democrats in that convention--

Mr. SHIRAS. I have yielded to my colleague, Mr. Olmstead.

Mr. OLMSTED. I understood you to find fault with the Democratic convention for nominating or attempting to nominate a Republican.

Mr. GILBERT. As a Democrat.

Mr. SHIRAS. I say Mr. Connell went to a Democratic convention and was nominated.

Mr. OLMSTED. Let me ask my colleague if he himself was not nominated by a Democratic organization?

Mr. SHIRAS. Yes, and the three other Republican Congressmen in Allegheny County also received Citizens' nominations. Mr. Dalzell himself received a Citizens' nomination, although he did not receive a Democratic nomination.

Mr. OLMSTED. Did you receive Democratic support and were you elected in that way against the regular Republican nominee? Is not that a fact?

Mr. SHIRAS. That is not the fact, sir, as stated. I ran as an avowed Republican, and, as is often the case, received several party nominations.

Mr. KLUTZ. The Democrats did not vote for you, did they?

Mr. OLMSTED. A good many of them did. (Laughter.)

Mr. SHIRAS. As this matter is becoming a little personal, perhaps I had better refer briefly to the political situation in Allegheny County. We have not any Democratic party in Allegheny County practically, for they have joined in the fight for good government; we have two Republican parties there. If the Democrats had run a Democratic candidate in my district against two Republicans, he would not receive probably more than 4,000 votes out of the 30,000 votes cast.

Mr. CONNELL. To which party do you belong?

Mr. SHIRAS. Do not interrupt me. You are on the floor today as a courtesy heretofore given former members. You must not participate in these proceedings, especially as they concern your own interests.

When the vote was taken there I had 14,500 votes; the other Republican had about 14,500 votes, so there was but a very small difference between the two, but the vote that was cast there for me represented the untrammelled, nonofficeholding vote in my district. I think I got practically every fairminded Republican vote in that district in that particular contest. (Laughter.) I will tell you why I think so.

Mr. OLMSTED. Then there are 14,500 trammelled Republicans in that district? (Laughter.)

Mr. SHIRAS. No; but there are many officeholders in that district, Federal State, and county (laughter), and two or three thousand relatives. Now, I got few of those votes.

Mr. CASSEL. What has become of the parties that nominated you at that time? Have not they gone back into the Republican party?

Mr. SHIRAS. I am not going back into the pedigree of Allegheny County politics. No one can understand them, and I can not expect the gentleman to understand them.

Mr. GILBERT. There is no contest about your seat.

Mr. SHIRAS. The gentleman indicates that I did not represent the Republicans in my district, intimating that if I did I would have had a larger majority.

Mr. OLMSTED. No; I think it simply shows that you have become one of the officeholders.

Mr. SHIRAS. You look at it from a different point of view. Now let me tell you gentlemen about that district. My Republican opponent ran on the "organization" Republican ticket, on the same ticket as Governor Pennypacker, on the so-called "straight Republican ticket." Governor Pennypacker carried the Twenty-Ninth Congressional district by 20,000 majority, and my Republican State ticket in this Congressional district. Could he have been more badly defeated?

Mr. KENNEDY. The same thing occurred over in Lackawanna, did it not?

Mr. SHIRAS. I am being diverted from what I was saying.

Mr. GILBERT. Now will the gentleman answer my question? What proportion of the Democrats in the convention in this Congressional district were in favor of the nomination of Mr. Connell as the Democratic nominee?

Mr. THAYER. Thirty-two out of 192.

Mr. SHIRAS. Now, gentlemen, you do not want to hear me on what the Democrats of Allegheny County could, would, or should have done, or my political pedigree, but it is simply a question of fact, "Who was elected?" and you can not see who has been elected, for the Committee on Elections has so limited the inquiry that not over fifteen of the witnesses whose testimony was taken is material to this issue.

Mr. SIBLEY. Let me call your attention--

Mr. SHIRAS. Let me give the reason, because I do not want to make a statement and then have to analyze it before I go on. I started to say that the result of this Democratic convention was that not only was Mr. Connell's nomination thrown off the Democratic ticket, but Mr. Howell, the admitted Democrat, and whom the Democrats knew had a chance of election, was also thrown off the Democratic ticket.

The SPEAKER. The time of the gentleman has expired.

Mr. McCLAIN. I will yield the gentleman ten minutes more if he desires it.

Mr. SHIRAS. The controversy that arose in this Democratic convention, in which the contestant desired to carry off the prize, is not material, or ought not to be, except for one phase. Everyone here who is candid will admit that if Mr. Howell had been before his district on the straight Democratic ticket, it would have given him four or five thousand Democratic majority, and he would have certainly gotten it but for the extraordinary and peculiar methods of procedure of that Democratic convention.

Therefore I say, gentlemen, the question in this controversy is as to the alleged Democratic convention, with a Republican candidate, and an actual Democratic candidate. I take it that all Republican Members here who are in favor of fair play well know that Mr. Howell got 461 majority, instead of the 4,000 or 5,000 he ordinarily would have had. It is difficult for this committee to show that all these votes were intentionally fraudulent. I take it that all Republican Members here who are in favor of fair play will be interested. I take the position that in the consideration of this case there is no doubt that the committee has failed to fully understand the subsequent effect of this Democratic convention when figuring upon the majority that Howell would have had.

Mr. CASSEL. Do you mean to say that the committee, which has given two weeks' continuous work in going over this evidence and testimony, four weeks almost, commencing at 10 o'clock in the morning and continuing until 5 o'clock, and giving through their report their conclusions that they have arrived at, that they do not know more of it than you, when you say that you have not been able even to read it?

Mr. SHIRAS. I have been trying to get to the very proposition, because the bulk, perhaps, of this testimony, showing what you did, is what has led up to my general proposition, viz, whether you have established the fact of Mr. Connell being entitled to a seat under this evidence. Now, what do you do? You find 461 plurality in favor of the Democratic candidate, and you change that to 223 in favor of the contestant. How do you do that? Up to a certain point the committee did not go astray. It showed, I think, good judgement when it took up the case of these three precincts, which they charged to have been, on their face, full of fraud. To take these up and with careful judgement proceed to determine how they would get at the fraud and what effect the fraud had on the general result.

But they did not treat it fairly. In the first place, they found 50 illegal votes of persons who had not paid their taxes, 50 illegal votes of persons who had not registered, and those, to some extent, were technically illegal votes, but instead of taking those votes out of Old Forge and the Second and Third wards of Winton, and even charging all against Mr. Howell, what did they do? They threw out the entire 797 votes, though Mr. Howell had 454 majority.

Mr. McCLAIN. May the gentleman allow me to interrupt him for a moment just to say I will allow him as much time as he wants and he can proceed as he desires.

Mr. SHIRAS. Now, that, gentlemen, is the starting point of this case. Here are districts that cast 797 votes that gave Mr. Howell 625 votes and 172 to the contestant, and an admission that part of these were technically illegal ballots and not fraudulent in the worst sense. They threw out those 797 votes, and they do not show in the evidence taken in Old Forge and in the Second and Third wards of Winton that any single one-mark me—that a single one of those fraudulent votes had been cast for Mr. Howell, but on the contrary, the only evidence of illegal votes cast was that they were cast for the contestant. Is that not correct, I ask the gentleman from New York?

Mr. SWANSON. You mean that there was no fraud on the ballot box?

Mr. SHIRAS. I say in the proof they did not attempt to prove any of those illegal votes had been cast for Mr. Howell.

Mr. SWANSON. They were simply people who voted not being properly registered.

Mr. SHIRAS. There may have been false impersonations, but I am not defending that; I am analyzing how they got at the question of the separate fraudulent votes or assumed illegal votes--

Mr. GILBERT. They cast that vote to Mr. Howell without any proof--

Mr. SHIRAS. They found nothing, in my judgment, which should lead to the throwing out of the entire precincts. The result of that was that Mr. Howell still had 8 majority and then they went back and by aliunde proof--here is the dangerous point in their process, by aliunde proof--they found that 32 of those 797 votes had been cast for Mr. Connell. Now, what was the result, gentlemen, of that finding? It was this: There were three precincts with 797 votes and with the large majority of 454 for Mr. Howell which were absolutely thrown out. They destroyed this entire vote, yet found Mr. Howell elected by 8 majority. They then go back and go over the embers, you might say, of the destroyed votes and find 32 for Mr. Connell, and turn that Democratic district, which gave 454 majority for Mr. Howell, over to Mr. Connell by a unanimous vote--32 for Connell, nothing for Howell. It seems incredible.

Mr. SWANSON Which gave that majority?

Mr. SHIRAS. Yes.

Mr. DRISCOLL. Will the gentleman yield for a question?

Mr. SHIRAS. Certainly.

Mr. DRISCOLL. Is not that the ordinary practice, that when a district or poll is thrown out for fraud, to go back and prove votes cast for both parties by evidence aliunde? Was that not done in the Fifty-fifth Congress in the case of Wise v. Young and in many other cases.

Mr. SHIRAS. I do not think it was ever done under conditions as they existed in this case.

Mr. DRISCOLL. No two conditions in elections are exactly alike, but where we throw out votes of certain districts because of fraud, the practice for both parties is to go back and prove the votes cast for their candidates aliunde.

Mr. SHIRAS. Now, I want to ask a question in return. Is it not a fact that those three districts cast 797 votes, which gave Mr. Howell a majority of 454 votes, and by throwing out those precincts it still left a majority of 8, and that the action of the committee in finding those 32 votes put the result in favor of Mr. Connell?

Mr. DRISCOLL. Why, yes, but-- (Applause on the Democratic side.) Oh there is nothing to cheer about this; we are dealing in facts here. We stated it yesterday ourselves, and it is not necessary for a Mugwump from Pennsylvania to state it over again. I simply say, is it not the invariable rule? Did not Mr. Howell have the same chance to go back and prove his votes in those districts? Did he not have the same opportunity to prove them if he wanted to?

Mr. SHIRAS. Now, gentlemen, I am trying to talk about the equities in this case.

Mr. NORRIS. May I ask the gentleman a question?

Mr. SHIRAS. Certainly.

Mr. NORRIS. In your judgment was the committee justified in throwing out the three precincts? Do you agree with them in that?

Mr. SHIRAS. I do not agree with them on that point. I do not criticise them very harshly, but I do not agree with them. What I think they ought to have done is, having found about 125 irregular votes, some technically irregular and some absolutely fraudulent, they should have deducted those votes, even if they deducted them all from Howell. That would have been bad enough, but to throw them all out was unfair, in my judgment.

Mr. CASSEL. In the report of the Second Ward of Winton, 184 votes were cast for Howell and 178 votes were declared and proved fraudulent.

Mr. SHIRAS. Who found them fraudulent?

Mr. CASSEL. They were shown fraudulent by the evidence.

Mr. SHIRAS. Now, we find the case stands in this way. That when they took the disputed districts this great number of votes, amounting to nearly 800, were thrown out of the three precincts, making a unanimous vote for Connell of 32 to nothing. That, if sustained, would elect Connell by 24 majority. Now, that does not look like much of a plurality to come into the House with, with thousands of pages of testimony at an expense of thousands of dollars, showing only a plurality of 24. Well, what does the committee do? They had a taste of "aliunde", and they then did what, to my mind, is the one illegal proposition that bars out most of this testimony. The testimony was taken showing that 1,700 illegal votes were cast; yes, upward of 2,000. If I am incorrect I wish the chairman would correct me--

MR. DRISCOLL. Two thousand and two.

Mr. SHIRAS. Two thousand and two; and when the committee came to consider these votes they were of the opinion that there were a number of fraudulent votes, and under aliunde proof they attempted to show that a great number had been cast for Mr. Howell, and thousands of pages of testimony were taken upon that branch of the case. I do not say it was wrong to take the testimony upon that point, but I say that when the committee came to make the report they really barred out the testimony and have prevented its consideration by the House. They found, I repeat, that there were 1,700 illegal votes; and what did they do? They file a report in which they say that "at least 200 votes"--that is the language of the report--"at least 200" of these votes were cast for Howell.

When they came to make the report, you find that in round numbers they deduct 200 from Howell. Let me show you what that means. Upon an investigation of the attitude of the members of the committee we find that they can not tell who the various parties were, what their names were, or where they were located. Is this not most extraordinary? In my mind it is the turning point in this case. Not only we as Republicans can not know,

but the opposition is powerless to pass upon the two questions that arise in each of these 200 cases: Was the vote illegal, and was it cast for Mr. Howell? It is the introduction of this bad precedent that arouses in the main my opposition.

Thus, having agreed that there were 1,700 illegal votes, and believing that "at least 200" of them were cast for Mr. Howell, they promptly charge them up and take from his count 200 votes that are not identified by name or voting precinct.

Mr. KENNEDY. Why, they were passed upon by the majority of the committee.

Mr. SHIRAS. I would like to ask the gentleman a question. Does the gentleman mean to say that his committee passed upon these 200 votes and has got them entered on the record, in the minutes, as 300 voters from certain precincts? And by a vote of the committee determined that they were illegal?

Mr. KENNEDY. The committee passed upon 200. In my judgement there are a thousand.

Mr. SHIRAS. I did not draw the report.

Mr. RANDALL of Texas. The committee did not pass on the 200.

Mr. SHIRAS. I am not saying there were not 200 illegal votes there. I am not saying that they ought not to be deducted, if you can prove them, but I say you have to do it in a legal way. Let me say to the members of the majority of this committee that when they had a vote that they wanted to deduct from Mr. Howell's count, one of the gentlemen should have said, "Mr. Chairman, I move you that the vote of John Smith, illegal by false registration or nonpayment of taxes, which vote the evidence shows has been cast for Mr. Howell, shall be deducted from his count." That should have been put to a vote of the entire committee, and if the committee affirmatively by its majority struck that out, the Republicans and Democrats voting upon it, then that vote should have been taken from the count of Mr. Howell.

But what have you done? You have simply come to the conclusion— all of you, as individuals—that there were "at least 200" illegal votes out of 1,700 that were cast for Mr. Howell, and you have deducted them without identifying them by the name of the voter or voting precinct, a thing I never heard of, even in the "solid South." Now, unless the members of this committee can deny what I say here—that they have taken 200 votes that they can not identify—it seems to me that it shows the dangerous character of the aliunde evidence, and it is upon that that this gentleman (pointing) relies for obtaining his seat.

Mr. CASSEL. Mr. Speaker, let me answer that just here. First, the members of the minority say that these questions were not discussed by the majority who signed this report. The majority report was signed by the majority members of this committee, and it was not submitted to the minority. We passed a resolution by vote of the committee stating that we thought that Mr. Connell

was entitled to his seat. The majority then prepared this report and signed it.

Mr. SHIRAS. Let me ask the gentleman a question--

Mr. JOHNSON. Mr. Speaker, will the gentleman let me make a statement right here? I do not want to take any of his time.

Mr. SHIRAS. I will yield to the gentleman.

Mr. JOHNSON. The majority of the committee furnished the minority of the committee the names of the thirty-two voters whose testimony was established by aliunde evidence. We are able to examine them and see for ourselves whether there is anything upon which to base it. They do not furnish us any of the list of the 200 men that they say illegally voted for Mr. Howell, and we can not examine that, and the House can not.

Mr. DRISCOLL. Mr. Speaker, I would like to ask right here the gentleman from South Carolina a question. Is it true that the majority furnished the minority those thirty-two names? Is it not true that I asked one member to furnish the names that he had examined to the rest of us, and also to the members of the minority?

Mr. JOHNSON. May I make another statement?

Mr. SHIRAS. Mr. Speaker, I have not yielded to the gentleman from New York (Mr. Driscoll).

Mr. JOHNSON. May I answer the gentleman's question?

The SPEAKER. Does the gentleman yield?

Mr. SHIRAS. Yes, I will yield to the gentleman from South Carolina.

Mr. JOHNSON. The majority of the committee divided up this work. That is the reason they do not know any more about it. One man examined one part of the record and another man another. I examined all of it. That is the difference. (Laughter.) One member of the committee who made up the list of the 32 aliunde votes handed that list to the ranking member of the minority of the committee, and the majority of the committee adopted his work.

Mr. FOSTER of Illinois. Let me ask this question. Is there any evidence in the record showing that the 200 votes thus thrown out were cast for Mr. Howell?

Mr. JOHNSON. We do not know whose votes those 200 were; the names are not given.

Mr. SHIRAS. Now, I should like to make this reply to the gentleman from Pennsylvania (Mr. Cassel). He having admitted that he and his five colleagues on the committee passed upon these 200 votes; suppose that on the question of charging up those votes for Mr. Howell or taking them away from him there had been a division among those six members of the committee; suppose the vote had been 4 to 2, then, if the Democratic members had come in

and voted on that question, that vote would not have been thrown out.

In other words, there was only a majority of a majority voting upon that question of striking out these votes. The result is that the committee itself does not know what those 200 votes represent. They could not agree and have not agreed on that point. Those votes are simply floating in the air, without name or habitation. No one can identify those voters. No member of the committee or anyone else can do so.

Mr. CASSEL. I believe that I speak truthfully when I say that at least four of the six members of the majority of the committee, after having gone over the testimony on the one side and on the other, were in favor of putting into this report anywhere from 500 to 1,000 of those people.

Mr. SHIRAS. It would not have been any worse if you had done so.

Mr. CASSEL. We were satisfied, and supposed the majority of the committee would be.

Mr. SHIRAS. I am simply asking for fair play in this matter. I say that unless you show whose votes those 200 were, they ought not to be thrown out. It seems to me this is only ordinary fair play.

Mr. DRISCOLL. Will the gentleman allow me to ask one more question—that is all?

Mr. SHIRAS. Certainly.

Mr. DRISCOLL. If those three districts—the Second and Third wards of Winton and the first district of Old Forge—are thrown out, how does that leave the vote?

Mr. SHIRAS. It leaves the votes in favor of Mr. Howell.

Mr. DRISCOLL. Now, is it not true that Mr. Howell did not try to prove aliunde any of the votes cast for him or any of the illegal votes alleged to have been cast for Mr. Connell? That is true, is it not?

Mr. SHIRAS. I will make a practical answer to that question in this way: It was competent perhaps, for Mr. Howell to prove by aliunde testimony the whole 2,000 votes, and it would have cost him \$10,000 or \$15,000. That sort of proceeding on the other side cost the contestant probably \$50,000. Such a contest of "aliundeism" would be a farce, and the prize would go to the biggest purse.

Mr. DRISCOLL. If you have read the evidence, have you any doubt that at least, we will say, 10 illegal votes, because that number would be sufficient, were shown by evidence aliunde but competent to have been cast for Mr. Howell? Have you any doubt about that?

Mr. SHIRAS. I did not quite catch the purport of the gentleman's question.

Mr. DRISCOLL. Have you examined it?

MR. DRISCOLL. Is there not allunde evidence sufficient to show that at least 10 of these illegal votes were cast for Mr. Howell?

MR. SHIRAS. I do not think so, upon the evidence.

MR. DRISCOLL. Have you examined it?

MR. SHIRAS. I have examined the testimony on which the supporters of the contestant rely.

MR. DRISCOLL. You have not read it fully; you have not read the whole of it.

MR. SHIRAS. But you have not identified the voters. That is the reason I say that this evidence should have been barred out.

MR. FOSTER of Illinois. Has the gentleman any doubt that at least 20 of these votes were cast for Mr. Howell?

MR. SHIRAS. Not the least.

Now, I want to call attention to another point. In these dsputed districts only 32 votes have been proved for Mr. Connell, here 172 are returned. Were the rest of the votes returned for Mr. Connell, where 172 are returned, legal or illegal? Unless this question is determined, it seems to me you have not proved anything. The danger that arises in a case of this kind is clearly shown in respect to these 200 votes. Now Mr. Speaker, I have taken more time than I expected. This is simply a question of asking for fair play. I do not believe it right to delegate our consciences in a close case like this to the committee and allow them to determine the whole question of law and of fact. I have no hesitation in coming to the conclusion that it is unfair to the sitting Member, unfair to the Tenth Congressional district, unfair to the State of Pennsylvania, and unfair to the Republican party to unseat Mr. Howell. (Loud applause.)

#### The Roll Call and the Aftermath

A few moments after Mr. Lanning and myself, on the Republican side, had concluded our remarks the speaker directed that the roll be called on the motion to award the seat to the contestant, Connell.

As the members voted, it soon became apparent that the large Republican majority would be greatly reduced or wiped out.

The vote was as follows: Connell 156; Howell 148, so that a change of four votes would have permitted the sitting member to retain his seat.

Before the roll call a number of Republicans absented themselves, while a half dozen more sat in their seats and merely answered "present" when their names were called. Had a small fraction of those who refused to vote, as evidence dissatisfaction, given their support to Mr. Howell he would not have been ousted.

During the confusion following the announcement of the result, Judge Walter I. Smith of Council Bluffs, Iowa, came to me and said, "I have been in Congress a number of years, but this is the first time I had reason to be ashamed of my vote. Had you opened the attack at the beginning of the proceedings, instead of at the end, it would have given many of us a chance to get our bearings. I had definitely pledged my vote to Mr. Connell and had not courage enough to shift at the last moment." There were other Republicans who did not feel this way, for General Grosvenor, the doughty old war horse from Ohio, purposely passed my seat that he might shout out, "Some day you will regret having voted for that Democrat!" I answered that I "was not voting for a Democrat but for justice."

It may be stated that my attitude in this contest was approved by practically all my constituents and the other voters in the adjoining districts. Later I received assurance of a renomination by the parties that had previously supported me, while a message came from the Republican organization that though it understood I was not a candidate for re-election, it seemed certain that if I were I would receive the support of the Republican leaders who did not wish to see me succeeded by my former opponent, W. H. Graham, whose association with Governor Stone had brought him into popular disfavor. On the other hand General Grosvenor, by reason of a factional row had later been refused a

renomination for Congress, in his district, and in his resentment tried to get the Democratic nomination, in which he failed, thus showing that his party fealty was only skin deep.

My two distinguished colleagues who had been elected on the Citizens' ticket at the time I was, voted for Connell, saying to me, in explanation, that they hoped to receive the regular Republican nomination next time, which might be jeopardized if they voted for a Democrat. These hopes, however, were blasted, for having become "regular" they were cast aside by the political bosses as ones no longer to be feared. I cite these instances as indicating that blind partisanship, or political timidity, does not appeal to the electorate at home.

As a sequel to this part of the narrative, it may be stated that when I declined to be a candidate, my personal friend and political associate, Stephen G. Porter, leader in the Citizens' party movement, was given the regular Republican nomination for Congress, over my old rival, W. H. Graham, and was elected by 20,000 majority. Mr. Porter <sup>was</sup> ~~has-been~~ successively re-elected by the people until he served some twenty-five years, attaining the high position of Chairman of the Committee on Foreign Relations. This result indicates how the temporary reform movement in Allegheny County broke the political shackles of nearly fifty years, and gave to the voters the opportunity to select candidates standing high in the popular esteem.

(N)

A

CHAPTER  
The Contested Election Case of Connell vs. Howell in  
Which the Author Participated

*Events Leading up to the Case*

Following the nomination of candidates by the Citizens' party, and the endorsement of the same by the Democratic organization of Allegheny county, objections were filed to this endorsement by a Democrat holding office under the Republican postmaster of Allegheny city, and a hearing on this issue was fixed at Harrisburg, where such matters were decided by the Dauphin county court.

I was requested to take charge of this matter, and went to Harrisburg, where I engaged well known legal counsel to appear in our behalf. While in the court room, awaiting the call of the case, I was much interested in a similar issue then being considered by the judges. At a <sup>Congressional</sup> Democratic convention in the 10th district, William Connell, a Republican, was endorsed by this convention over George Howell, the Democratic aspirant. The evidence showed plainly that Connell had debauched this convention by a lavish use of money and by various coercive methods. So evident was this that the court announced before adjournment that the Democratic nomination received by Connell was fraudulent. The court failed, however, to give the nomination to Howell, so that he was forced to run on an independent Democratic ticket.

When the Citizens' party case was called, the court with equal promptness held that the Democratic endorsement was legal, and dismissed the proceedings.

After the congressional elections I found that Howell, the independent Democratic candidate, had been returned elected by a majority of more than 500 votes over Connell, and had been duly seated. Thereupon Connell began a contest against his successful

2/ rival on the ground of fraud or other irregularities. This contest was designedly referred to the Committee on Elections No. 3, composed of six Republican members friendly to the contestant who had served in two previous terms, while the minority was made up of three southern Democrats from South Carolina, Mississippi and Texas, whose appeals for honest elections were sure to be regarded as a joke by the Republicans of the House.

Active on this committee was a Pennsylvania member, H. Bird Cassell, and a close personal friend of the contestant. This member, whom I knew very well, began soliciting votes among the Republican members before the case had been decided by the committee. In speaking about the matter to me, he said, it would be a nice thing to give the "old man" his seat for a Christmas gift, and that he was going to see "Uncle Joe" about hastening a favorable report from the committee. I told my solicitor that I could not promise to vote for the seating of Connell, as his Democratic opponent had been fairly elected and would probably have received a majority of 5,000 votes if he had not been deprived of the regular party nomination by the unfair means used by the Republican candidate, since the the Democratic candidate for governor had carried this <sup>Congressional</sup> district by a majority of about 6,000. In concluding this interview, I said that I did not expect to take the floor when the contest came before the House, for my motives might be misrepresented owing to Democratic support I had received in my own case.

In the course of a few weeks the election committee, by strictly party vote, awarded the seat to the contestant; and, it, being a privilege issue, was put on the calendar for immediate consideration. By this time it had become known generally that Mr. Connell, the millionaire coal baron, had spent over \$100,000 in

3) presenting his evidence before the committee, calling some 6,000 witnesses with a view to muddling up the contest; while his opponent, a country schoolmaster, was unable to summon wholesale evidence of this kind on account of the prohibitive expense. The committee, on finding that a number of fraudulent or otherwise illegal votes had been cast, did not attempt to determine for whom such ballots were cast, but merely assumed that Howell had been the sole beneficiary of these illegal ballots, and in this way the majority of the committee found that Connell had been elected by a little over 200 votes. C

Such a method of procedure was of course preposterous. The debate on this contest lasted several days, the speakers being divided on party lines, and it was evident that the case would be decided in the same partisan way unless something could be done to thwart this wrong. Finally I asked John Dalzell and several other party leaders to prevent the unseating of the duly elected Democratic candidate, saying that it was a farce for us to protest against the unfair methods in the south, and at the same time try to convince the public that a millionaire candidate had been defrauded of his seat by a country schoolmaster. Each of these replied that the committee had heard all the evidence and it was therefore a safe rule to abide by their findings, and that, as a new member, I should not run counter to this custom.

When one hour remained before the taking of the vote, I could stand it no longer, and under the time limitation rule covering the concluding arguments, I took the floor. Up to this time little general interest was being taken in the arguments, for with the large Republican majority, and no apparent split

4)

in the party lines, the result seemed certain. On it becoming manifest that I was speaking in opposition to the committee's report, I was asked to occupy the middle aisle, while the leading partisans on either side grouped themselves about me. As a result of this excitement I felt some concern, but under the time allowance hoped to be able to explain why I intended to cast my vote for the sitting member. When my time expired it was renewed repeatedly. Thus I was able, under many interruptions, to present my views, and to take goodnaturedly personalities, although, of course, I was far from satisfied with the manner in which I was able to meet and parry the queries designed to embarrass me in every possible way.

Ten minutes before the vote was taken, and just after I concluded speaking, Wayne Parker, a member from New Jersey, came to my desk saying that the New Jersey delegation was going to vote solidly for Howell. I thereupon begged Parker to take a few of the remaining minutes in behalf of the sitting member, and while he hesitated, Wm. M. Lanning of New Jersey said he would speak and did so effectively, for his regularity could not be questioned. It may be stated that the speaker's probity and judicial fairness was evidenced a few years later when President Roosevelt appointed him a Federal judge.

I now quote from the Congressional Record a portion of the debate in the contested election case, under date of February 9th and 10th, 1904: