
REPORT

OF

THE COMMITTEE ON PRIVILEGES AND ELECTIONS

OF THE

UNITED STATES SENATE

RELATIVE TO

THE RIGHT AND TITLE OF WILLIAM A. CLARK
TO A SEAT AS SENATOR FROM THE
STATE OF MONTANA,

TO WHICH ARE APPENDED

Senate Document No. 2 (Memorial of Members of Montana Legislature),
and Senate Document No. 3 (Memorial of Citizens of Montana),
and Testimony taken before the Senate Committee.

PART I.

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No. 1052.

THE MONTANA ELECTION CASE.

APRIL 23, 1900.—Ordered to be printed.

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

REPORT.

[To accompany Senate Res. No. 284.]

THE RIGHT OF SENATOR WILLIAM A. CLARK, OF MONTANA, TO A SEAT IN THE SENATE.

This case was referred to the committee on December 4, 1899, upon a memorial dated February 25, 1899, signed by 27 members of the legislative assembly of Montana, and upon a later memorial signed by Robert B. Smith, governor of Montana; T. E. Collins, state treasurer; Henry C. Stiff, speaker of the house of representatives of the sixth legislative assembly of Montana; A. J. Campbell, member of Congress from Montana, and Charles S. Hartman, ex-Representative in Congress from Montana.

On December 7, 1899, the Senate directed the committee to investigate the right of W. A. Clark to a seat as Senator from Montana and authorized the sending for persons and papers. The committee began consideration of the case January 5, 1900, and hearings were held on January 5, 6, 8, 9, 10, 11, 12, 13, 17, 19, 20, 22, 23, 29, 30, and 31; February 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, and 28; March 1 and 2; April 3, 5, and 6; and the finding of the committee was made April 10, 1900.

FINDING OF THE COMMITTEE.

The finding of the committee is that the election to the Senate of William A. Clark, of Montana, is null and void on account of bribes, attempted bribes, and corrupt practices by his agents, and of violations of the laws of Montana defining and punishing crimes against the elective franchise.

THE ADMITTED OR UNDISPUTED FACTS.

This finding is made in view of certain admitted or undisputed facts, with their attendant circumstances, appearing in the testimony taken by the committee, as follows:

I.

Prior to 1895 the elections in Montana were accompanied by enormous expenditures of money, unquestionably involving widespread belief that extensive corruption was resorted to in all elections. Ex-Governor Hauser, a witness called by Senator Clark in his defense, testified that at the first State election the Big Four, so-called, consisting of Senator W. A. Clark, Mr. Broadwater, Mr. Marcus Daly, and himself, as first contributions gave \$40,000 each; and he also estimated that the expenditures made in connection with the contest to determine whether Anaconda or Helena should be the capital of the State were upwards of \$1,000,000. Senator Clark said he spent over \$100,000 in that contest.

II.

On February 25, 1895, Montana undertook to protect herself against corruption in elections and passed a law relative to crimes against the elective franchise, which limited in purpose and amount the political expenditures which could be made in any election, either by a political committee or a candidate, especially naming a candidate for United States Senator, who could not give more than \$1,000 to any one committee in one county and could not pay more than \$1,000 for his personal expenses in lawful ways specified, and provided that every political committee should make a public return of its expenditures, stating from whom every dollar was received and to whom every dollar was paid, and that every person acting otherwise than under a political committee should make a similar public return; and further provided a fine and imprisonment against persons omitting to make the return required by law.

III.

Senator Clark has been constantly a candidate for office. He was a candidate for Congress in 1888 and defeated. In 1890 there were two legislatures in Montana. He was elected United States Senator by the Democratic legislature, but was not seated. He was again a candidate for the Senate in 1893, but there was no election. In 1895 he was voted for as the Democratic candidate, but Senator Carter was elected.

In the summer of 1898, after he had consulted with Governor Hauser and other supporters, including at that time Mr. A. J. Campbell, a committee of his friends was created outside the State committee of the Democratic party, which was in the hands of persons not favorable to him; this, his committee, being organized for the purpose of controlling the politics of the State and securing the legislature to meet in January, 1899. This committee consisted of his son, Charles W. Clark, William McDermott, and A. J. Davidson, agent. Charles W. Clark was made treasurer, and the assistants of the committee were John B. Wellcome, Walter M. Bickford, A. J. Steele, John S. M. Neill,

Frank E. Corbett, E. L. Whitmore, and Walter Cooper. To this committee Senator Clark gave unlimited authority to expend money which he agreed to furnish; an estimate, however, being made that at least \$35,000 would be necessary to secure the State convention, and that \$75,000 might be needed to secure the State legislature.

IV.

In the canvass which ensued the approximate expenditures admitted by the various members of his committee and their assistants were as follows: By Charles W. Clark, \$25,000; by McDermott, \$22,000; by Davidson, agent, \$22,300; by Wellcome, \$25,000; by Steele, \$11,000; by Corbett, \$5,000; by Whitmore, \$4,600; by Cooper, \$2,900, mainly furnished by Charles W. Clark; and the amount of these expenditures Senator Clark himself paid to his son. The advances and payments made by Senator Clark to his committee and agents, as admitted by him, amounted to about \$139,000, of which sum Charles W. Clark received from him on August 12, 1898, \$35,000; October 17, \$20,000; November 23, \$40,000, and February 13, 1900, \$20,592; and in addition to this \$139,000 Senator Clark paid \$5,000 to McDermott, one of his agents; \$5,000 to Wellcome, his attorney, and \$5,000 to E. C. Day, a member of the legislature.

V.

None of the members of his committee or their assistants made the sworn returns required by law, nor did Senator Clark himself make any return.

VI.

In December, 1898, Senator Clark began negotiations with one H. W. McLaughlin, a member of the legislature, for the purchase of his wood lots and sawmills, and on the 9th day of December bought all Mr. McLaughlin's property for the sum of \$24,684, paying \$10,000 down, and on the 12th of March paid him \$6,000 cash and \$8,684 in stock of a new lumber company to which the property was transferred, which lumber company employed Mr. McLaughlin as its agent, with a salary of \$200 per month.

VII.

On December 31, 1898, Mr. Walter M. Bickford received from Mr. Charles W. Clark five one-thousand-dollar bills and four five-hundred-dollar bills, and went to Missoula for the purpose of purchasing a supposed indebtedness on account of his ranch of one E. P. Woods, a member of the legislature, but, not succeeding in meeting Mr. Woods, he returned the money to Mr. Charles W. Clark. In February, 1899, Mr. Massena Bullard paid to Mr. Kemper the amount due upon the ranch and a deed was made running to Mrs. Woods, which was not recorded, but in January, 1900, the property having been sold to other persons for \$9,750, the deed to Mrs. Woods was destroyed and new deeds made to the new purchasers.

Senator Clark knew of Mr. Bickford's attempts to purchase the indebtedness which Woods owed, and the correspondence shows that

the object was to secure Mr. Woods's vote for Senator Clark. Mr. Bickford testified: "In pursuance of that letter (the letter of November 21 from one Ector) and of the invitation which I at that time received, I made arrangements to obtain, for the purpose of using it to prevent the indebtedness of Mr. Woods going into the hands of Mr. Daly's friends, the sum of \$7,000 with which to take up that indebtedness." On November 12, 1898, Mrs. Woods mortgaged their sheep and cattle for \$1,000, payable in one year, and on April 22, 1899, paid the mortgage debt. Mr. Woods has left Montana and gone to New Mexico.

VIII.

Mr. W. E. Tierney was senator and W. C. Eversole and Michael Shovlin were representatives from Broadwater County. Mr. Tierney voted for Mr. Clark on the first ballot, and Eversole and Shovlin came over on the sixth. Mr. Tierney was a dealer in general merchandise in three small firms—Miss A. M. Darcy & Co., Tierney & Co., and Eversole & Co.—which had moderate capital and were in debt. After the legislature adjourned, on March 3, Mr. Shovlin deposited \$8,500 in the Montana National Bank. Eversole, who had in fact been only a clerk, bought out Mr. Tierney, paying him \$1,600 in cash and a credit with his new firm of \$3,000.

On June 1 Mr. Tierney organized the State Bank of Townsend with a capital stock of \$25,000, of which he took \$5,800. Mr. Shovlin took \$1,000 and Mr. Eversole \$1,000, nearly all the \$25,000 passing through Mr. Tierney's hands in currency. His \$5,800 he says he took from the money drawer in a safe in the office of Miss Darcy & Co., but whence this \$5,800 came he did not show by any writing whatever.

IX.

Mr. E. L. Whitmore, the confidential agent and employe of Mr. Charles W. Clark, purchased of D. G. Warner, a member of the legislature, certain lots in the town of Boulder, Jefferson County, and a small ranch nearby and took the deed in his own name, paying the amount of \$7,500 in bank bills in Helena in the first week of January, 1899, the deed being recorded February 1, 1899. Mr. Warner has left Montana and gone to California.

X.

Mr. H. H. Garr, member of the legislature, lodged a package during the session with Mr. Peeler, of the bank of Kalispell. After the legislature adjourned he obtained the package, went to his home, and in the name of Miss Wickham, his wife's aunt, a milliner, who had lived with him for seven years, purchased a ranch for \$3,500, for which he paid in currency, including a thousand-dollar bill, which money he said he obtained from his wife's aunt, believing she had accumulated and kept it in a box in her room in his house.

Mr. Garr had been a poor man, with little or no property, earning sometimes \$50 or \$75 a month as a notary public, sometimes nothing. He had in cash \$75 or \$80 when elected and borrowed \$25 to go to Helena with. His wife's aunt paid board in the family at the rate of

\$2.50 a week. He had no previous knowledge of how she had accumulated this money. Mr. Steele had obtained interviews with him before the legislature met with a view to securing his vote, and after his arrival he figured in the Whiteside exposure.

XI.

Mr. John H. Geiger was a Republican who, after Mr. Whiteside's exposure, was seated in the legislature as a senator, in place of Mr. Whiteside, on the 26th day of January, by the votes of the Republicans and the Democratic supporters of Senator Clark, on the ground that his name on a few of his ballots had been marked at the wrong end, and on the 28th Mr. Geiger voted for Senator Clark. He was a man with no regular occupation, was entirely without means, and a borrower of small sums. During the session of the legislature he received and carried home with him \$3,600. After accounting for one or two petty sums, he claims that he obtained this money by faro gambling and through \$1,100 in bills which he found in his room and believed came in connection with some bills pending in the legislature which Mr. John B. Wellcome was carrying through as attorney.

XII.

Mr. B. F. Fine, a member of the legislature, and a mining operator with no property, in May after it had adjourned, in pursuance of an agreement made during the session by Senator Clark after his election as Senator, received \$2,000 from Senator Clark's bankers, and since that date has received other moneys, making the sum of \$5,000 in all, which has been all his earnings since his nomination, his only business being the hunting up of testimony to disbar or impeach Mr. W. A. Clark, of Madison County, one of the principal witnesses against Senator Clark, to do which no steps have yet been taken.

XIII.

Mr. Stephen Bywater, a Republican, 30 years of age, and a railroad conductor, voted for Mr. Clark for the first time on the eighteenth ballot, when he was elected. On the 3d day of March, immediately after the legislature adjourned, he deposited in the Montana National Bank \$15,000. He accounts for it by saying that he brought from Kalispell, his home, \$6,000 in currency, which he kept with him during the whole session of the legislature, and by saying that he received on March 3 \$9,000 from his brother for the purchase of stock in a mining company in British Columbia, but he produced no writing in confirmation of his statement as to either the \$6,000 or the \$9,000. He did produce a prospectus and letter showing that there was such a mining company and that he was its president, and a Mr. Peeler, a broker, with whom Mr. Bywater kept an account, testified that Mr. Bywater also kept a package of money not included in the bank account.

XIV.

Mr. E. C. Day was Senator Clark's candidate for speaker and was defeated in the Democratic caucus, receiving 25 votes against 30 votes for Mr. Stiff. Mr. Day was the leader of Mr. Clark's forces in the

legislature during all the ballotings after the second. On February 13 Senator Clark personally wrote a letter directing that \$5,000 should be given to Mr. Day for his services in the legislature and as a retainer as counsel in the future. This amount was received by Mr. Day through Mr. Wellcome and Mr. Davidson on the 3d day of March, the day after the legislature adjourned.

Mr. Day testified that the services for which he received the \$5,000 were as follows: "I had acted as the manager, you might say, or leader of his forces upon the floor of the house. I attended to keeping a quorum present and seeing that friends of his were sent for that were not present at roll call, and made motions and attended to the ordinary parliamentary—perhaps you would call it—procedure of his friends in that body." Later Mr. Day received from Charles W. Clark \$2,000 as fees in the Wellcome proceedings and \$1,000 in two suits brought by Mr. Whiteside against the Butte Miner and the Helena Independent.

XV.

Mr. W. W. Beasley, a Republican representative, first voted for Senator Clark on the eighteenth ballot, when he was chosen, and that night or the next night he left Helena for St. Paul, having in his possession about \$5,000 in currency, at least \$1,000 of which was a thousand-dollar bill. He claimed that he had taken this money with him to Helena and carried it in his vest pocket during the whole session. By no writing did he show whence he received it or what he did with it. He claimed that he kept the money with him because he was in embarrassed circumstances in the sheep business and was afraid of law suits. When he was elected he owed a board bill of nearly \$400, and while in Helena took out a life-insurance policy and gave a note for the premium. All the time he had a bank account in the Thomas Cruse Savings Bank at Helena.

ADDITIONAL STRENGTHENING FACTS.

While the findings of the committee are justified by the foregoing admitted and undisputed facts, with their attendant circumstances standing alone, those facts are strengthened by additional facts, including various unsuccessful attempts to secure votes by offers of money, which, although denied, are found by the majority of the committee to be sustained by the preponderance of the testimony. It would unnecessarily incur and extend this report to attempt to give these additional facts in detail.

THE WHITESIDE \$30,000 INCIDENT.

In addition to these unsuccessful attempts at bribery, certain other alleged attempts will be narrated, because there is difference of opinion in the committee concerning them. They are as follows:

The case of W. A. Clark, State senator from Madison County, is one of those embraced in the Whiteside exposure. Mr. Clark and Mr. Whiteside testified that Mr. Wellcome placed \$10,000 in an envelope and handed it to Mr. Whiteside, Mr. Clark's initials being written by the latter on the back of the envelope, the amount to be delivered to Mr. Clark in case he voted for Senator Clark. This

money was part of the \$30,000 produced by Mr. Whiteside before the legislative committee. Mr. Wellcome denied these statements.

State Senator H. L. Myers testified that in like manner \$10,000 was placed in an envelope, upon the back of which he wrote his initials, and the package was retained by Mr. Whiteside to be delivered to him in case he voted for Mr. Clark. Mr. Whiteside testified that the \$10,000 was furnished by Mr. Wellcome. Mr. M. L. Hewett testified that Mr. Charles W. Clark authorized the payment of \$10,000 to Myers. Prior to the session of the legislature Mr. Charles W. Clark had, as shown by a letter signed by him, sent \$500 to Mr. Myers as a retainer as counsel for the Bridger Coal Company, which Mr. Myers did not accept. But Mr. Clark denied the statement made by Mr. Hewett, and Mr. Wellcome denied the statement of Mr. Whiteside.

As to Representative H. H. Garr, Mr. Whiteside testified that in like manner \$5,000 was furnished him by Mr. Wellcome for Mr. Garr and placed in an envelope, on the back of which Mr. Garr wrote his initials, Mr. Whiteside retaining the package as in the other two cases. Mr. Garr admits seeing the money and writing his name upon the back of the envelope, but says it was for purposes of identification, and that he did not know what the transaction meant. Mr. Wellcome denied these statements.

Mr. Whiteside, who was a State senator, testified that in like manner \$5,000 was given to him by Mr. Wellcome as part of \$10,000 which he was to receive for his vote for Senator Clark, which he placed in an envelope and later produced before the legislative committee. Mr. Wellcome denied these statements.

It is in connection with these last four cases of attempted bribery—those of Messrs. Clark of Madison, Myers, Garr, and Whiteside—that the controversy concerning Senator Clark's election has been largely maintained from the beginning.

The reasons why a majority of the committee find that, on the whole, the statements of Messrs. Clark, of Madison, Myers, and Whiteside are true, notwithstanding the denials of Mr. Wellcome and others, may be briefly stated. The three accusers undoubtedly occupied the position of detectives, who willfully deceived the parties with whom they were dealing and against whom they made charges. On the other hand, the parties against whom they testified and who make the denials are charged with crimes to which, if guilty, they would be quite certain to add the offense of false swearing.

The majority of the committee, under all the circumstances appearing, are not willing to consider the situation as one of equilibrium between the detectives on the one hand and the alleged lawbreakers on the other. If Messrs. Clark, of Madison, Myers, and Whiteside testified falsely, they must have contemplated in the beginning a conspiracy of the basest character, to be followed up by perjury of the worst sort, and they must have intended to pass through ordeals in the course of the investigations which would be made to which it can not be inferred they were willing to subject themselves merely to prevent Senator Clark from becoming a United States Senator.

THE ALLEGED DALY CONSPIRACY.

In the opinion of the majority there was no affirmative disproof produced by Senator Clark at any time showing that the facts in connection with the \$30,000 exposure were not true. The charge that the

accusations and the exposure resulted from a conspiracy formed and carried forward by Mr. Marcus Daly was a necessity of Mr. Clark's canvass and defense. But Mr. Daly and Mr. Conrad and others who were suspected of conspiracy denied all knowledge of the \$30,000, of which \$27,000 was in one-thousand-dollar bills, which had been produced by Mr. Whiteside as the money furnished by Mr. Wellcome in the attempted briberies. No one-thousand-dollar bills were shown to have been in the hands of any of the alleged Daly conspirators. On the other hand, the five one-thousand-dollar bills and four five-hundred-dollar bills which Mr. Bickford took from C. W. Clark and carried to Missoula on December 31, in connection with the E. P. Woods transaction, were returned to Mr. Clark on January 1, and during the ensuing week, when the alleged briberies were attempted, large sums in currency were in the hands of Mr. C. W. Clark and Mr. Wellcome, including various one-thousand-dollar bills.

Mr. Clark, on January 3, had brought to him by a Mr. Hirshfield \$9,000 in currency, in which were three one-thousand-dollar bills, and from this \$9,000, or the money returned by Mr. Bickford, he gave Mr. Wellcome three or four one-thousand-dollar bills. On December 28 Mr. Wellcome drew from bank \$10,000, of which he says one, two, three, four, or five were one-thousand-dollar bills, and he carried them in the inside pocket of his vest until he used them. There were on the 3d or 4th of January three one-thousand-dollar bills and eight five-hundred-dollar bills in the possession of Mr. Whitmore, Mr. Charles W. Clark's confidential agent in the purchase of D. G. Warner's property. Charles W. Clark testified that his income was \$250,000 per year.

In connection with the consideration of these last four cases of attempted bribery—of Clark, of Madison, Myers, Garr, and Whiteside—it is important to state, in view of the difference of opinion in the committee concerning the credibility of Messrs. Clark, of Madison, Myers, and Whiteside, that the whole committee find that if all the testimony concerning the \$30,000 and all the testimony of Mr. Whiteside and Mr. Clark, of Madison, were laid aside there would still remain sufficient evidence in the case to lead the committee to find, as they do, that Mr. Clark's election is void. From the briberies which have been established the majority of the committee feel justified in finding that there were other successes in procuring, by corrupt practices, the votes of members of the legislature, where the facts naturally can not be directly proved.

THE CONDUCT OF THE REPUBLICAN LEGISLATORS.

The conduct of the Republican members of the legislature who, on the 28th day of January, left their Republican candidate and voted for Senator Clark and gave him his election, in the opinion of the majority of the committee, calls for special criticism. Senator Clark, beginning with 7 votes on January 10, had carried his votes up to 41 on the 27th of January. Mr. Conrad, beginning with 36 votes, had, on the 27th, 29 votes, and until that day his natural strength of over 30 votes had not been impaired from the beginning. There was an absolute deadlock and no possibility of the election of a Democrat without the aid of the Republicans.

On January 28, on the second ballot. Mr. Clark's vote was carried

from 41 up to 54. Mr. Conrad's went down from 30 to 27, but only one of his supporters, Mr. Moran, voted for Senator Clark. Four Republicans, McKay, Worden, Hedges, and Lindsay, voted for the Republican candidate, Mr. Marshall, for whom they had first voted on January 10.

Eleven Republicans—Messrs. Geiger, Hobson, Mitchell, Phillips, Beasley, Bywater, Ingersoll, Jaqueth, Long, Magee, and Marcyes—went over to Senator Clark and gave him the election.

It is difficult to account for these Republican votes for Senator Clark. Senator Clark's candidacy had been tainted on the 10th of January by the Whiteside exposure. The facts exposed had not been disproved on January 28. It is true that a grand jury composed of six persons had reported that while there was evidence tending to show that money had been used it would not, in their judgment, warrant a conviction by a trial jury, but no other fact impugning the testimony of Messrs. Whiteside, Clark, of Madison, and Myers had then appeared.

The reasons given for the Republican votes for Mr. Clark seem to be pretenses and covers. Mr. Clark, who had been negotiating with Mr. Hobson, the leader of the Republicans, wrote a letter on the 16th of January, in which he declared himself to be in favor of a tariff on Montana products. Some of the Republicans said there ought not to be a deadlock, and that it would be better to have a Democratic Senator than a vacancy.

No one pretends that any effort was made to bring about the election of any other Democrat than Mr. Clark, against whose agents the charges of bribery had been made. The committee do not say that the votes of all the eleven Republicans were improperly secured, but that those of Mr. Geiger, Mr. Beasley, and Mr. Bywater were, has already been found. The circumstances of suspicion against the others are numerous.

Senator S. S. Hobson is mainly responsible for the action of the Republican members. He was the chairman of their caucus and the leader in the Clark movement. He early began negotiations with Mr. Clark, and the latter's written promise that he would be an independent tariff Democrat was addressed to Mr. Hobson under the date of January 16.

Mr. Hobson was a man of moderate means. When he was elected he owed \$22,000 or \$23,000 to the Fergus County Bank, of which he was president. This he paid in May, 1899, and went East and to Europe about the time Senator Clark went; and when in connection with the Fergus County Bank he feared some manifestation of indignation at his course from ex-Senator T. C. Power, Senator Clark, in accordance with a promise he had made soon after his election, promptly purchased the \$46,000 of the bank stock which Mr. Power owned and took a transfer thereof, which has not been recorded on the books of the bank.

In the face of all the facts tending to impeach the conduct of so many of the Republican members, and of the evident political reasons why they should not have contributed their votes to the election of Senator Clark, a Democrat, under charges of corruption, the finding that Senator Clark's election was obtained by corrupt practices, in the opinion of the majority, is much strengthened by the action of the 11 Republicans who, on the 28th day of January, abandoned their own party and thus strangely elected a Democratic Senator.

THE DISOBEDIENCE OF THE MONTANA LAW CONCERNING CRIMES AGAINST
THE ELECTIVE FRANCHISE.

The direct violations by Senator Clark and his committee and agents of the provisions of the Montana laws, before stated, are of the first importance in connection with the conclusions reached by the committee. The citizens and legislature of Montana in 1895, conscious of the discredit into which the State had fallen by the enormous expenditure of money in previous elections, made an earnest and legitimate effort to prevent corruption in politics in the future, and the act of February 25, 1895, was passed and incorporated into the penal code of that year.

RECITAL OF THE SUBSTANCE OF THE LAW.

A concise but correct and complete analysis of this law of 1895 is as follows:

The Montana Penal Code, in Title IV, headed "Crimes against the elective franchise," in section 85 of the act of February 25, 1895, provides that no person, to aid in his election to a public office, shall, directly or indirectly, by himself or through another person, expend or promise to expend any money or other valuable thing, except, as later provided, "for personal expenses and to a political committee."

Section 86 provides that a candidate may pay—

(1) His own personal expenses for traveling and purposes properly incidental to traveling.

(2) For sending out special publications giving his position and views.

(3) For stationery and postage, telegraph and telephone and other public messenger service, and other petty personal expenses. "And in no other case whatever" shall the total sum for his own personal expenses as authorized exceed the sum of \$1,000 by any candidate for United States Senator.

Section 87 provides that a candidate may pay money to a political committee, not exceeding \$1,000 by a candidate for United States Senator, nor to more than one committee in any county.

Section 88 applies the term "political committee" to "any combination of persons" who shall aid a party, principle, or candidate, and every such committee or combination must have a treasurer who shall keep its accounts.

Section 90 requires every treasurer to file his account within thirty days after an election, stating in detail his receipts and expenditures.

Section 91 requires every person who, acting otherwise than under the authority of a committee, expends money, to file such a statement as is required of a treasurer "in the county in which he is a legal voter."

Section 98 requires every statement to be made on oath.

Section 104 punishes violations of sections 90 and 91 by fine not exceeding \$1,000 and imprisonment for not more than three months.

After the passage, in 1895, of this law punishing crimes against the elective franchise, there was no serious occasion to test its provisions until 1898. In 1896 the coalition of the Silver Republicans with the Democrats made the State overwhelmingly Democratic, the plurality for Mr. Bryan being 32,043, and for Mr. Hartman, the Bryan Congressman, 24,503. In 1898, when Senator Clark renewed his canvass for the United States Senate, and his friends determined to directly disregard the law, he had no right to expend more than \$1,000 through his one committee, nor more than \$1,000 for his own personal expenses.

He expended a sum vastly in excess of the limit provided by law, and failed to render any return; and no such return was made by the aforesaid persons acting in his behalf. This failure to make return was with full knowledge of the fact that it was widely charged and widely believed that the election had been accomplished by bribery and the corrupt expenditure of money on a very large scale. He also, in June, 1899, with full knowledge of this belief and these charges, but in accordance with what he testified was his custom, destroyed all his checks, including those for his expenditures in his canvass, and was unable to give any full and satisfactory vouchers for the money so expended by him and his agents.

The committee find the case proved without relying upon such destruction of checks, failure to render accounts, and disregard of the legal limit of expenditure. But they furnish to the committee strong additional reasons for believing the other evidence, which seems to them to establish the corruption charged.

On the other hand, returns were made, as appears in the book of testimony, by the Republican State committee of expenditures of \$4,291.31, by the Democratic State committee of \$9,161.49, by the Silver Republican State committee of \$1,708.25, by the People's Party State committee of \$1,193.50, by the Silverbow County Democratic committee of \$10,005.06, by the Silverbow County Silver Republican committee of \$1,453.05.

Mr. Marcus Daly testified that he contributed to the State committee \$4,500, to the Silverbow County committee \$2,500, to the Deer Lodge County committee \$500, to the Missoula County committee \$250; making his total contributions \$7,750. Mr. Daly was not a candidate and has never been a candidate for any office. Mr. W. G. Conrad, who was the principal opposing Democratic candidate for United States Senator against Mr. Clark, swore that he contributed to the State and various county committees between \$5,000 and \$10,000, not over \$1,000 to any one committee, and after the election he spent between \$200 and \$300 outside of hotel bills; but paid no money in aid of his candidacy for Senator.

QUESTIONS OF LAW INVOLVED IN THE CASE.

In justifying the finding of the committee it is not necessary to discuss any doubtful questions of law.

(1) It is clear that if by bribery or corrupt practices on the part of the friends of a candidate who are conducting his canvass votes are obtained for him without which he would not have had a majority his election should be annulled, although proof is lacking that he knew of the bribery or corrupt practices. (Pomeroy's case, Taft Elec. Cases, 330; Caldwell's case, 334; Clayton's case, 348; Ingalls's case, 596; Payne's case, 604, 609, 610; Minority report, 616.)

(2) It seems to have been admitted that if the person elected clearly participated in any one act of bribery or attempted bribery he should be deprived of his office, although the result of the election was not thereby changed. (Pomeroy's case, Taft Elec. Cases, 330; where Mr. Pomeroy had 84 votes against 25.)

According to the law, as understood by the committee, Senator Clark can not be permitted to retain his seat. He received 54 votes and

there were 39 against him, leaving him an apparent majority of 15. If he obtained through illegal and corrupt practices 8 votes which would otherwise have been cast against him, he was not legally elected. More than this number of votes, the committee find from all the evidence, was thus obtained.

It is also a reasonable conclusion upon the whole case that Senator Clark is fairly to be charged with knowledge of the acts done in his behalf by his committee and his agents conducting his canvass. He arrived in Helena from Butte on January 4 and remained there until after his election on January 28 and was in constant conference with his committee and agents.

REJECTED TESTIMONY—CRITICISM OF THE PROSECUTORS.

There has been much testimony received by the committee which has not proved of substantial value. Many of the witnesses were unreliable, having made contradictory statements and having apparently sought to obtain from both sides of the controversy money for testifying.

Much criticism has been made of the contestants, especially of Mr. A. J. Campbell, a member of the House of Representatives, and an active prosecutor of the charges against Senator Clark. Some members of the committee can not refrain from expressing their disapproval of many of the methods pursued by Mr. Campbell and Mr. Whiteside in the prosecution of the charges against Senator Clark, and they do not approve of the actions of Mr. Daly in agreeing to furnish an unlimited amount of money to carry on the prosecution.

It appears from the evidence that Mr. Campbell, among other things, made a suggestion in a letter to a detective employed by him indicating that he wished the detective to obtain information from some member of the grand jury of one of the counties in Montana; and, further, that his stenographer or secretary gave several hundred dollars to two persons who made affidavits bearing on matters involved in this prosecution, the drafts for which sum Mr. Campbell paid. It also appears that Mr. Campbell, in the course of the prosecution, participated in opening a letter written by Mr. Bickford to one Jesse B. Root.

It further appears that Mr. Campbell was one of the committee of friends consulted by Senator Clark in the summer of 1898 at the opening of the canvass, and that he was nominated for Congress at the Democratic convention held that year by the supporters of Senator Clark, as well as other members of the convention. In June, 1899, Mr. Campbell became the attorney for a corporation in which Marcus Daly was largely interested.

While it is true that bribery can never be proved by the testimony of the briber nor of the person bribed, and that it is almost always necessary to obtain the required information from go-betweens or persons who have explored the field and made reports backward and forward as to the probability of obtaining results by bribery, yet some members of the committee believe that this does not justify the character of acts which are proved and established against Mr. Campbell. Some members of the committee, however, do not join in any criticisms of Mr. Campbell and Mr. Daly.

These go-betweens who were employed by Mr. Campbell testified before the committee, most of them in the last instance, in behalf of Senator Clark. Some of their statements were true and some false.

The testimony of these persons, where they had made conflicting statements, has not been regarded by the committee unless corroborated, as the testimony of accomplices and detectives ought always to be corroborated. These witnesses, whose conduct has occasioned comment, had all been originally employed by Senator Clark or his committee or his friends. They are as follows:

One Z. T. Cason was retained by Senator Clark personally to endeavor to secure the vote of Representative Marcyes, and after the election was over, in a letter dated February 3, 1899, Senator Clark sent him \$500. Cason testified before the supreme court and before this committee that he was authorized by Senator Clark to offer \$10,000 to Mr. Marcyes. Later, getting into communication with Mr. Jesse B. Root, who was Mr. John B. Wellcome's law partner, he received \$1,500 from him, and in consideration thereof signed a letter drafted by Root, dated December 8, 1899, saying that his previous statement was untrue, and then went to Baker City, Oreg., where he remained under an assumed name until he was caught by the subpoena of this committee.

One Benjamin Hill, during the Senatorial contest, was a supporter of Senator Clark, and was paid by Senator Clark's clerk \$350. He later met Whiteside and agreed to get evidence against Senator Clark, and told him what he now says was a "pack of damn lies," and he also entered into communication with Mr. Campbell. On June 30, 1899, he made a long affidavit against Senator Clark, which he now testifies was wholly false. He subsequently revealed to Senator Clark's counsel what he claimed to be the whole story. He was paid \$610 by Mr. Wellcome, and appears to have received from the prosecutors about \$1,500.

One L. L. Wright went to Helena to work for Senator Clark, and received from Mr. A. J. Steele \$240. Later he engaged, through Benjamin Hill, to get evidence for the prosecution against Senator Clark, and on the 3d of November, 1899, he made an affidavit for the contestants, which he testified before the committee was false. He received \$250 from Benjamin Hill, which appears to have come from the prosecutors.

One Thomas T. Lyon went to Helena, at the request of Mr. Wellcome, to serve Mr. Clark. Mr. Wellcome gave him \$250. Later, in company with Benjamin Hill, he engaged with Campbell to furnish evidence against Mr. Clark, and said that Campbell agreed to give him \$5,000, which Mr. Campbell denies. Later he told his story to Charles W. Clark, and on November 29, 1899, made an affidavit for the Clark side. He received from that side \$250 and received from Mr. Campbell \$300. He told Mr. Henry G. Rickerts that he had received from the Clark side \$2,000, which he had deposited in his wife's name.

William F. Rector's testimony was considered by the committee entirely unreliable. So was that of E. L. P. Ector, except where he was corroborated, as he was upon the important parts of his evidence by Senator Clark and Mr. Bickford and by his correspondence with those two gentlemen.

THE APPROACH TO THE SUPREME COURT.

The majority of the committee think that the transactions connected with the judges of the supreme court of Montana need special consideration. The undisputed facts are as follows:

I.

Proceedings having been instituted against John B. Wellcome for the purpose of securing his disbarment for attempted bribery in connection with Senator Clark's election, it appears that on August 5, 1899, after a preliminary decision by the supreme court that the court had jurisdiction, one Dr. William Treacy, a Republican advocate of Senator Clark, at Helena, approached Mr. Justice William H. Hunt, one of the three members of the supreme court, being his family physician, bearing a proposition which he said was from a party in town that Judge Hunt could have \$100,000 if the court would dismiss the proceedings against Mr. Wellcome, and he advised Judge Hunt to accept the amount.

This proposition was first mentioned to Judge Hunt about noon. At half past 10 in the forenoon a special train had arrived from Butte bringing Charles W. Clark, Frank E. Corbett, and E. L. Whitmore, who went to the Helena Club, where, during the day, they saw Mr. John S. M. Neill, Mr. Davidson, Mr. Steele, Mr. Steve Carpenter, and Mr. Thomas Miller. They said they came to see Mr. B. Platt Carpenter, to induce him to put in an answer for Wellcome in the proceedings pending, and they returned in their special train to Butte in the afternoon, after Mr. Corbett had also had an interview with Mr. Justice Pigott, narratives of which were given to the committee by both parties thereto.

[Mr. Justice Pigott testified that Mr. Corbett told him that he had come over on the special train because Mr. Neill on the previous night telephoned to Butte that it had been ascertained that a deal could be had with the supreme court; that he, Mr. Corbett, condemned such a movement, had a mortgage of \$24,000 on Mr. Neill's newspaper, and would foreclose it if Mr. Neill made any such attempt. All this Mr. Corbett denied.]

II.

On three occasions Dr. Treacy approached Attorney-General C. B. Nolan, who was in charge of the proceedings against Mr. Wellcome, and proposed to him to accept \$100,000 and dismiss the proceedings.

III.

During the pendency of the proceedings against Mr. Wellcome Rev. A. B. Martin, president of a school at Great Falls, Mont., in which Senator Clark and Chief Justice Brantley were trustees, visited the chief justice with a letter in his hand dated October 7, 1899, from Senator Clark, wherein the latter urged him to see the chief justice and endeavor to prevent the disbarment of "that splendid man," John B. Wellcome.

Upon the foregoing undisputed facts and other facts which are con-

troverted, a majority of the committee believe that Senator Clark's agents, in their desperation on account of the decision of the court to take jurisdiction in the Wellcome case, attempted an improper approach to the judges of the court and to Attorney-General Nolan, which fact can not but have a certain influence in the consideration of the other acts of those agents in connection with the Senatorial election. A minority of the committee, however, believe that the transactions were res inter alios acta, and that the evidence does not sufficiently bring home to Senator Clark or his agents any improper attempt to influence the court or the attorney-general.

PROMPT ACTION SUGGESTED.

This briefest possible summary of the material facts in a case whose hearings have covered over three months, from January 5 to April 10, 1900, and whose record requires 2,677 pages, has extended to great length, and the committee will not present any general considerations in this report. The Senate should, as a duty to itself and to the country, demonstrate by its action in this case that seats in the United States Senate procured as Senator Clark's has been procured can not be retained by the deliberate judgment of the Senate.

The Senate also owes a duty to the people of Montana who, conscious of the bad repute into which the State had fallen by reason of vast expenditures of money in connection with its elections, manifested such a public sentiment that the legislature of 1895 passed a statute which, if obeyed, would have redeemed the State from its bad name. For the direct and gross violations of that statute and the consequent discredit which continues to rest upon the State, Montana has a right to expect a prompt and decisive remedy from the action of the Senate upon the report of this committee.

The committee report and unanimously recommend the adoption by the Senate of the following resolution:

Resolved, That William A. Clark was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Montana."