

CHARGES RELATIVE TO ELECTION OF ISAAC STEPHENSON.

FEBRUARY 12, 1912.—Ordered to be printed.

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

REPORT.

[To accompany S. Res. 136.]

The Committee on Privileges and Elections, to whom was referred certain charges preferred by the Legislature of the State of Wisconsin against Isaac Stephenson, a Senator of the United States from the State of Wisconsin, with instructions to report to the Senate whether in the election of said Isaac Stephenson as a Senator of the United States from the State of Wisconsin there were used or employed corrupt methods or practices, have had the same under consideration and submit the following report:

On August 15, 1911, the Senate adopted the following resolution:

Resolved, That the Senate Committee on Privileges and Elections or any subcommittee thereof be authorized and directed to investigate certain charges preferred by the Legislature of Wisconsin against Isaac Stephenson, a Senator of the United States from the State of Wisconsin, and report to the Senate whether in the election of said Isaac Stephenson, as a Senator of the United States from the said State of Wisconsin there were used or employed corrupt methods or practices; that said committee or subcommittee be authorized to sit during the recess of the Senate, to hold its session at such place or places as it shall deem most convenient for the purposes of the investigation, to employ stenographers, to send for persons and papers, and to administer oaths; and that the expenses of the inquiry shall be paid from the contingent fund of the Senate, upon vouchers to be approved by the chairman of the committee or chairman of the subcommittee.

Pursuant to the authority given by said resolution the Committee on Privileges and Elections appointed a subcommittee consisting of Mr. Heyburn, chairman, Mr. Sutherland, Mr. Bradley, Mr. Paynter, and Mr. Pomerene, with full powers to investigate said charges.

On January 20, 1912, the subcommittee reported to the full committee as follows:

IN THE MATTER OF THE INVESTIGATION OF THE CHARGES AGAINST ISAAC STEPHENSON, A SENATOR OF THE UNITED STATES FROM THE STATE OF WISCONSIN.

To the honorable the Committee on Privileges and Elections of the United States Senate:

Your subcommittee proceeded pursuant to the terms of its appointment to investigate the above-mentioned charges, and in pursuance of said duty met in

the city of Washington and, having organized, proceeded to adopt a plan for holding such investigation.

It was agreed by your subcommittee that the investigation should commence on October 2, 1911, at the city of Milwaukee, in the State of Wisconsin.

Accordingly your subcommittee met at the city of Milwaukee on the above-mentioned date, all parties in interest being present. Hon. Charles E. Littlefield, W. E. Black, and H. A. J. Upham, Esqs., appeared as counsel for Senator Stephenson.

The governor and the attorney general of the State of Wisconsin were notified by the chairman of your subcommittee of the time and place of the hearing and were invited to indicate to the committee whether or not they desired to be present and participate in any manner in such investigation. The governor of Wisconsin, speaking for the State, informed your subcommittee that no one on behalf of the State would appear at such investigation.

Your subcommittee then proceeded to the examination of witnesses and documents, which examination occupied 25 days, during which time 124 witnesses were sworn, 35 affidavits received, and 2,100 pages of printed testimony taken, which testimony, affidavits, and exhibits are herewith submitted as a part of the report of your subcommittee.

Your subcommittee has given the fullest consideration to all the testimony introduced and has considered its weight and effect under the rules pertaining to the investigation and is of the opinion that the charges preferred against Senator Isaac Stephenson have not been sustained, and your subcommittee finds that the election of said Isaac Stephenson as a Senator of the United States from the State of Wisconsin was not procured by corrupt methods or practices in said election of Isaac Stephenson.

W. B. HEYBURN, *Chairman.*
 GEORGE SUTHERLAND.
 W. O. BRADLEY.
 ATLEE POMERENE.

Mr. Heyburn, chairman of the subcommittee, submitted a statement of his views in support of the conclusions reached, and on the request of members of the committee further consideration of the matter was postponed to February 3, 1912, on which date a further postponement was had to February 10, 1912, with the understanding that any member of the committee might file a statement of his views to accompany the final report of the committee, and that a vote might be taken on that date.

On February 10, 1912, the Committee on Privileges and Elections met in regular session and received a statement of the views of Mr. Pomerene and Mr. Sutherland in support of the report of the subcommittee, and proceeded to the consideration of the report of the subcommittee together with the views expressed by the members thereof upon a full record of the testimony and proceedings in the case.

On motion it was ordered that the report of the subcommittee be adopted and that said subcommittee be discharged.

Whereupon it was ordered that Mr. Heyburn be instructed to report the action of the committee to the Senate, together with a transcript of testimony and of all the proceedings of the subcommittee, including the address of Hon. Charles E. Littlefield before the whole committee, and also the individual views presented by members of the committee. Leave was given to file a minority report by those dissenting from the conclusions reached.

Wherefore your committee, having given full consideration to the law and to the testimony and to all of the facts and circumstances brought to its notice, does find that the charges preferred against Isaac Stephenson, a Senator of the United States from the State of

Wisconsin, are not sustained, and your committee further finds that the election of said Isaac Stephenson as a Senator of the United States was not procured by corrupt methods or practices.

WM. P. DILLINGHAM.
 ROBERT J. GAMBLE.
 W. B. HEYBURN.
 GEO. SUTHERLAND.
 GEORGE T. OLIVER.
 JOS. F. JOHNSTON.
 DUNCAN U. FLETCHER.
 ATLEE POMERENE.
 W. O. BRADLEY.

VIEW OF MR. HEYBURN IN SUPPORT OF THE REPORT OF THE COMMITTEE.

The subcommittee having reported to the whole committee in favor of Isaac Stephenson, I desire to submit herewith the reasons which actuated me in arriving at that conclusion:

JURISDICTION.

On August 15, 1911, the United States Senate adopted the following resolution:

Resolved, That the Senate Committee on Privileges and Elections or any subcommittee thereof be authorized and directed to investigate certain charges preferred by the Legislature of Wisconsin against Isaac Stephenson, a Senator of the United States from the State of Wisconsin, and report to the Senate whether in the election of said Isaac Stephenson, as a Senator of the United States from the said State of Wisconsin there were used or employed corrupt methods or practices; that said committee or subcommittee be authorized to sit during the recess of the Senate, to hold its session at such place or places as it shall deem most convenient for the purposes of the investigation, to employ stenographers, to send for persons and papers, and to administer oaths; and that the expenses of the inquiry shall be paid from the contingent fund of the Senate, upon vouchers to be approved by the chairman of the committee or chairman of the subcommittee.

Pursuant to the authority given by said resolution the Committee on Privileges and Elections appointed a subcommittee consisting of Senators Heyburn, Sutherland, Bradley, Paynter, and Pomerene, with full powers "to investigate said charges preferred by the Legislature of Wisconsin relating to the election of Isaac Stephenson, a Senator from the State of Wisconsin."

MEETING OF SUBCOMMITTEE

In performance of said duty the subcommittee met at Milwaukee, Wis., on October 2, 1911, in the Federal Building, a quorum of said subcommittee being present.

The chairman announced that the subcommittee would recognize a duly authorized representative of the State of Wisconsin, in view of the fact that the State had submitted through its governor to the Senate of the United States the charges to be investigated. No one

appearing, the chairman then instructed the secretary of the subcommittee to communicate with the governor and attorney general of the State and advise them that the committee was in session in Milwaukee for the purpose of investigating the charges aforesaid, and to inquire whether or not the State desired to be represented at the hearing, and, pursuant to such instruction, the secretary sent the following communication to the governor:

MILWAUKEE, WIS., October 2, 1911.

HON. FRANCIS E. MCGOVERN,
Governor of Wisconsin, Madison, Wis.:

A subcommittee of the Committee on Privileges and Elections of the United States Senate, duly appointed, with instructions to investigate the election of Isaac Stephenson as a Senator of the United States from the State of Wisconsin, as recommended by the Legislature of Wisconsin as provided in joint resolution 58 of said legislature, has entered upon the investigation in the Federal Building, in the city of Milwaukee. As the State appears to be unrepresented by counsel, you are requested to advise the committee whether or not it is the desire of the State to be represented by counsel before this committee, and if so, designate in writing such person to represent the State.

W. B. HEYBURN, *Chairman.*

To which communication the governor replied as follows:

EXECUTIVE CHAMBER,
Madison, Wis., October 3, 1911.

HON. W. B. HEYBURN,
*Chairman Subcommittee of the United States Senate
Committee on Privileges and Elections, Milwaukee, Wis.*

MY DEAR SIR: In reply to your telegram of yesterday, in which you request me to advise your committee "whether or not it is the desire of the State to be represented by counsel" before your subcommittee, permit me to say that I find there is very serious doubt that I have any power to act in the matter. Joint resolution 58, to which you refer, confers no such authority. It simply requests the United States Senate "to investigate the manner, means, and methods by and through which Isaac Stephenson secured his election to the United States Senate," recommends to the district attorney of Dane County that prosecutions be commenced against all persons shown to have committed perjury in the senatorial inquiry in this city, and suggests that prosecutions be commenced in other counties of the State for such violations of the corrupt-practices or bribery statutes as the evidence may justify.

In the absence of any specific authority conferred by this joint resolution the only other possible source is chapter 268 of the laws of Wisconsin for the year 1911. Careful consideration of this statute leaves me in doubt as to whether it confers power upon me to employ at the expense of the State counsel to attend the investigation your subcommittee is now conducting. Nor can I see that much good is likely to come from such employment. Your invitation comes so late as practically to preclude the possibility of anyone whom I might select rendering any real service to your committee or materially assisting in the investigation now in progress. That investigation has already begun. The transactions to be inquired into are numerous and involved, as appears from the fact that the testimony already taken occupied many months of the time of committees of the State legislature and now fills a number of large volumes of printed reports. To be of service counsel for the State should have been employed months ago. I say this with no feeling of personal responsibility in the matter for the reason that until your telegram came yesterday there was no ground for anticipating that the appearance of an attorney for the State at this hearing would be acceptable to your committee. Indeed, more than a week ago, under date of September 25, the Associated Press quoted you as having expressed yourself as chairman of the subcommittee as follows: "The State of Wisconsin will not have an attorney in the investigation of the election of Isaac Stephenson by the United States Senate committee. This hearing is under the jurisdiction of the United States Senate, which does not recognize the State as a party to the investigation. This is an investigation, not a trial."

An additional reason why I should not avail myself of your invitation at this time is furnished by the practice of other committees charged with duties similar to yours. So far as I know no State has been represented by counsel at any of these investigations. The work has been done either by the members of the committee alone or by counsel of their own choosing. At any rate, the responsibility for a thorough, searching inquiry is upon your subcommittee acting as the agent of the United States Senate

in determining a question relative to the "election, returns, and qualifications" of one of its own Members. Neither the State of Wisconsin nor its legislature desires to assume the rôle of prosecutor or to sustain any other relation to this investigation than that of petitioner for a thorough, fearless, and impartial inquiry.

For the present, therefore, I shall take no action concerning the matter mentioned in your telegram. Assuring you, however, of my appreciation of your consideration in extending the invitation, I am,

Very truly, yours,

FRANCIS E. MCGOVERN.

The chairman inquired whether or not counsel were present to represent Mr. Stephenson. Whereupon Hon. Charles E. Littlefield, Mr. W. E. Black, and Mr. H. A. J. Upham appeared on his behalf and were recognized by the committee.

The joint resolution and specific charges certified to the United States Senate by the governor of Wisconsin were then read. (Transcript, pp. 4 and 5.)

Before entering upon the examination of witnesses by the committee Hon. Charles E. Littlefield, of counsel for Mr. Stephenson, requested leave to make a statement, which leave was granted. (Transcript, pp. 6-23.)

The subcommittee then proceeded to the examination of witnesses and documents, which examination occupied 25 days, during which time 116 witnesses were sworn and examined, 36 affidavits received, and upward of 2,100 pages of printed testimony taken, which testimony, affidavits, and exhibits are herewith offered as a part of the report of the subcommittee.

The subcommittee was directed to investigate certain charges preferred by the Legislature of Wisconsin against Mr. Stephenson. These charges were set forth in the communication of the governor of Wisconsin, and the papers accompanying the same, certified to the United States Senate, among which was the joint resolution adopted by the Legislature of Wisconsin on June 26, 1911, which is found on page 2 of the transcript.

The charges referred to in the resolution under which the subcommittee acted are as follows:

SPECIFIC CHARGES.

1. That Isaac Stephenson, of Marinette, Wis., now United States Senator and a candidate for reelection, did, as such candidate for reelection, give to one E. A. Edmonds, of the city of Appleton, Wis., an elector of the State of Wisconsin and said city of Appleton, a valuable thing, to wit, a sum of money in excess of \$106,000, and approximating the sum of \$250,000, as a consideration for some act to be done by said E. A. Edmonds, in relation to the primary election held on the 1st day of September, 1908, which consideration was paid prior to said primary election, and that said Isaac Stephenson was at the time of such payment a candidate for the Republican nomination for United States Senator at such primary, and did by such acts as above set forth violate section 4543b of the statutes.

2. That said Isaac Stephenson did, prior to said primary, pay to said Edmonds above-mentioned sums with the design that said Edmonds should pay to other electors of this State, out of said sums above mentioned and other sums of money received by said Edmonds from said Isaac Stephenson, prior to said primary, sums ranging from \$5 per day to \$1,000 in bulk, as a consideration for some act to be done in relation to said primary by said electors for said Isaac Stephenson as such candidate, in violation of said section.

3. That with full knowledge and with instructions from said Isaac Stephenson, as to how and for what purposes said sums were to be expended, said sums were so paid as above stated to said Edmonds by said Isaac Stephenson and that said sums were paid as above stated for the purposes above stated and also for the purpose of bribing and corrupting a sufficient number of the electors of the State of Wisconsin to encompass the nomination of said Isaac Stephenson at said primary for the office of United States Senator.

4. That in pursuance of the purposes and design above stated said Isaac Stephenson did, by and through his agents, prior to said primary, pay to one U. C. Keller, of Sauk County, an elector of this State, the sum of \$300 as a consideration for some act to be done by said Keller for said Stephenson preliminary to said primary, corruptly and unlawfully.

5. That in further pursuance of such purposes and design said Isaac Stephenson, by and through his agents, prior to said primary, paid to one Hambright, of Racine, Wis., large sums of money as a consideration for some act to be done by said Hambright for said Stephenson preliminary to said primary, said Hambright being then an elector of this State, corruptly and unlawfully.

6. That in further pursuance of the purposes and design above stated said Isaac Stephenson did, by and through his agents, prior to said primary, pay to one Roy Morse, of Fond du Lac, Wis., then an elector of this State, the sum of \$1,000 as a consideration for some act to be done by said Morse for said Isaac Stephenson preliminary to said primary, and corruptly and unlawfully.

7. That in further pursuance of such purposes and design said Isaac Stephenson, by and through his agents, prior to said primary, paid to divers persons, then electors of the county of Grant, Wis., ranging from \$5 per day and upward, as a consideration for some act to be done by said several electors for said Isaac Stephenson preliminary to said primary, corruptly and unlawfully.

8. That in further pursuance of such purposes and design, said Isaac Stephenson, by and through his agents, prior to said primary, did pay to divers persons who were at such time electors in this State a consideration for some act to be done for said Isaac Stephenson by such electors preliminary to such primary, corruptly and unlawfully.

9. That in further pursuance of such purposes and designs said Isaac Stephenson, by and through his agents, prior to said primary, did pay to electors of this State, who were of a different political opinion and who held to other political principles than those of the Republican Party, more particularly Democrats, sums of money as a consideration for some act to be done by such electors for said Isaac Stephenson preliminary to said primary, corruptly and unlawfully.

10. That in further pursuance of such purposes and design said Isaac Stephenson, by and through his agents, prior to such primary, did offer to pay to Edward Pollock, of Lancaster, Wis., certain sums of money, as editor of the Teller, a newspaper published in said city of Lancaster, Wis., and to other editors of newspapers who were at such time electors of this State, and for the purpose of purchasing the editorial support of such editors and as a consideration of something to be done relating to such primary, corruptly and unlawfully.

11. That said Isaac Stephenson did, prior to such primary, by and through his agents, promise and agree to pay to one Lester Tilton, a then resident and elector of this State, and residing at the city of Neillsville, Wis., a sum in excess of \$500 to procure or aid in procuring the nomination of said Lester Tilton to the assembly of this State from from Clark County, and did offer to give to said Lester Tilton a sum in excess of \$500 if said Lester Tilton would become a candidate for the assembly from said Clark County if said Lester Tilton would support said Isaac Stephenson for the office of United States Senator, all of which is in violation of sections 4542b and 4543b of the statutes.

12. That said Isaac Stephenson did, by and through his agents, give and promise and pay or agree to pay to other electors of this State sums of money to procure or aid in procuring the nomination of such electors to the senate and assembly of this State other than those electors residing in the district where said Isaac Stephenson resides.

13. That E. M. Heyzer and Max Sells, prior to said primary, being at such time employees of the Chicago & North Western Railway Co., a corporation doing business in this State, did contribute and agree to contribute free services as such employees for the purpose to defeat the candidacy of former assemblyman E. F. Nelson, from the district embracing Florence, Forest, and Langlade Counties, for the nomination for assemblyman from said district, all of which was done with the knowledge and consent and under the direction of said Isaac Stephenson, his agents, and employees, contrary to chapter 492, Laws of 1905.

14. That in further pursuance of the purposes and design above set forth said Isaac Stephenson, by and through his agents, did, in addition to paying certain sums as above set forth, offer and agree to pay to electors of this State, prior to said primary, a premium or bonus to those who in his employ carried their respective precincts in such primary for said Isaac Stephenson as such candidate.

15. That said Isaac Stephenson, if claiming an election by virtue of receiving a plurality of votes at such primary, then said Isaac Stephenson has violated chapter 502 of the laws of 1905 by failing and neglecting to file his expense account as provided by said chapter.

16. Charging generally the primary nomination or election of said Isaac Stephenson was obtained by the use of large sums of money corruptly and illegally, by the violation of sections 4542b, 4543b, and 4478b of the statutes relating to illegal voting, bribery, and corruption, and other laws above set forth relating to elections and primary elections.

John J. Blaine, a State senator, who made the said 16 specific charges, which constituted the basis of the legislative investigation, was examined in detail as to each of such charges and failed to sustain any of them, either by his own testimony or by reference to the testimony of others. The charges were made on information and belief according to his own testimony. He seemed upon examination to have no information upon which any belief as to their truth could be based.

An inspection of his testimony (transcript, p. 592, etc.) will fully justify the conclusion of the subcommittee that such charges were not sustained.

These charges were investigated by two legislative committees; first, by a joint committee which submitted a report which was not finally acted upon; second, by a committee of three members of the State senate, only one member of which was a member of the legislature when the report of that committee was made.

The time within which the joint legislative committee might take testimony and report was limited by the legislature to expire on the 13th day of April, 1909, and on that day the said committee met and adopted a resolution that each member make an outline of his proposed report and submit it at a later day for discussion before the committee.

Said committee then adjourned subject to the call of the chairman of the senate or assembly committee.

This ended the work of the joint investigating committee.

The State senate, acting independently of the assembly and in view of the expiration of the time within which the joint committee might finish its work, adopted a resolution on March 25, 1909, authorizing the president of the senate to appoint a committee consisting of three members to complete the investigation that had been carried on by the joint committee and to "further fully, fairly, and thoroughly investigate the campaign and election of Isaac Stephenson as a United States Senator, and the campaign and election of members of the legislature so far as their election in any way pertains to or affects the election of Isaac Stephenson as a United States Senator."

SPECIFIC QUESTIONS PRESENTED FOR CONSIDERATION.

In the order of their importance the duties of the subcommittee may be classified as follows:

First. To investigate the proceedings by the legislature, including the actions of Senator Stephenson and those representing him, during the session of the legislature.

Second. To investigate the campaign and election of members of the legislature so far as their election in any way pertains to or affects the election of Isaac Stephenson as a United States Senator.

Third. The primary election and the campaign.

ELECTION OF A SENATOR BY THE LEGISLATURE.

The law providing for the election of Senators by the legislature is as follows, being chapter 1, title 2, of the Revised Statutes of the United States:

SEC. 14. The legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting and organizing thereof, proceed to elect a Senator in Congress.

SEC. 15. Such election shall be conducted in the following manner: Each house shall openly, by a viva voce vote of each member present, name one person for Senator in Congress from such State, and the name of the person so voted for who receives a majority of the whole number of votes cast in each house shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of all the votes in each house he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for Senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature and shall take at least one vote until a Senator is elected.

SEC. 16. (Relates to filling vacancies.)

SEC. 17. (Also relates to the filling of vacancies.)

SEC. 18. It shall be the duty of the executive of the State from which a Senator has been chosen, to certify his election, under the seal of the State, to the President of the Senate of the United States.

SEC. 19. The certificate mentioned in the preceding section shall be countersigned by the secretary of state of the State.

PROCEEDINGS IN THE LEGISLATURE.

The Forty-ninth Legislature of Wisconsin consisted of 33 senators and 100 assemblymen, and convened at the capitol at Madison on January 13, 1909, at 12 o'clock m.

On Thursday, January 14, 1909, the organizing of both houses was complete, and the assembly adjourned until Tuesday, January 19, at 10 o'clock.

The senate organized on January 13, 1909, and on January 14 Senator Husting introduced joint resolution 3, providing for the investigation of the primary election, which was laid over until the next session, and the senate adjourned until Tuesday, January 19, at 10 o'clock a. m.

On Tuesday, January 26, the senate considered joint resolution 3, and a substitute was introduced by Senator Blaine. (Senate Journal, pp. 72-77.) This substitute contains the specific charges.

On January 26, 1909, a vote was taken on the election of United States Senator, each house voting separately.

In the senate the total number of votes cast was 17. Mr. Stephenson received 12 votes, Brown 4, Rummel 1. (Senate Journal, pp. 78-79.)

On the same day, January 26, upon the call of the roll in the assembly, the total number of votes cast for Senator was 84. Mr. Stephenson received 60, Neal Brown 16, Jacob Rummel 3, S. A. Cook

2, H. A. Cooper 1, J. H. Stout 1, and John J. Esch 1, which result was announced by the speaker. (Assembly Journal, pp. 74-75.)

On Wednesday, January 27, resolutions were introduced in the senate, among others joint resolution 8, being an arraignment of the United States Senate and a demand for its abolition, introduced by Senator Gaylord. (Senate Journal, p. 86.) It was referred to the committee on Federal relations. This is mentioned in passing only to show the temper of the legislature on the day of the first joint ballot for United States Senator.

At 12 o'clock noon of January 27, 1909, the two houses met in joint convention. The lieutenant governor, presiding, stated:

Gentlemen of the joint convention, you are assembled here for the purpose of expressing your choice for United States Senator. In order to comply with the Federal law the clerk of the senate and the clerk of the assembly will read from the journal of each house, respectively, the proceedings of the preceding day with reference to the election of a United States Senator.

The senate journal (p. 94) and the assembly journal (p. 80) records as follows:

The chief clerk of the senate read the journal of the senate of January 26, 1909, and the chief clerk of the assembly read the journal of the assembly of January 26, 1909. The president then said: "The clerk will call the roll. As your names are called you will arise from your seats and announce the candidate of your choice."

Senator Hudnall said:

I rise to protest against any other proceedings being taken in the joint assembly at this time except the announcement of the presiding officer that Hon. Isaac Stephenson is elected to the United States Senate for the term commencing March 4, 1909. I do that for the reason that it appears from the journal of the senate that the total number of votes cast for persons were 17, of which Isaac Stephenson received 12, Neal Brown 4, Jacob Rummel 1, and the journal of the assembly shows that of the members who voted for persons there were 60 for Stephenson, 10 for Brown, and 3 for Jacob Rummel; and it further appears from both journals of senate and assembly that Isaac Stephenson received a majority of all the votes cast in each house.

It devolves then upon the president of this joint assembly to declare Isaac Stephenson duly elected to the United States Senate, and then the duty devolves upon the president of the senate and speaker of the assembly to certify his election to the governor and to the secretary of state, and they to certify his election to the United States Senate. Any other proceeding is out of order and nugatory.

Senator Hudnall stated that he made this statement as a protest and as a point of order. The president held the point of order not well taken and held that Senator Hudnall was out of order in his protest.

The presiding officer then directed the nomination of candidates, and the joint assembly proceeded to vote for a United States Senator. There were 131 votes cast, of which Isaac Stephenson received 65, and the presiding officer announced that "it appears from the records of the convention that no person has received a majority of the votes cast for United States Senator." Whereupon the joint convention dissolved.

On no other day until the 4th of March, 1909, did anyone receive a majority of the votes cast in joint assembly. On that day (the 4th of March) upon the twenty-fourth ballot of the joint assembly there were 123 votes cast of which Isaac Stephenson received 63. Whereupon the chairman of the joint assembly announced the election of Isaac Stephenson, and the joint assembly adjourned sine die.

At each session of the joint assembly the question as to whether any vote in the joint assembly was necessary was raised by protest against such proceedings upon the grounds that, Mr. Stephenson

having received a majority of the votes cast in each house voting separately, no other or further duty remained for the joint assembly than that of reading the journals of the two houses of the proceedings in each relative to the election of a United States Senator on the day previous. These journals were read and the fact disclosed that in each house Mr. Stephenson had received a majority of all the votes cast. It remained only that "he shall be declared duly elected Senator." The statute does not prescribe who shall declare the person receiving a majority of the votes in each house elected Senator, nor in what form such declaration shall be made.

From the reading of the law it would seem that when the two Houses voting separately each gave Mr. Stephenson a clear majority and having met in joint session on the day following the vote in the separate houses, the journal of the proceedings of the two houses voting separately being read in joint convention and the result announced, the election was completed; the mere failure to declare him elected could not in any way defeat the will of the two houses as expressed in their separate votes.

The failure to make a specific declaration of his election was not vital. The action of the governor and secretary of state in deferring the certificate of his election or in misstating the time of his election could not affect that election.

If we are correct in assuming that the election of Isaac Stephenson was accomplished when the record of the two houses was read and announced in the joint assembly, then the failure or delay of the executive officers to perform their duty could in no way defeat his election as of the date of the meeting of the first joint assembly.

ACTS OF BRIBERY CHARGED.

Charges of bribery in the interest of Mr. Stephenson's election had been freely made both before the subcommittee and before the legislative investigating committee. Not one of these charges have been sustained by the testimony.

The word "bribery" has been applied to many acts that do not constitute bribery.

The procurement of advertising space or editorial comment in the newspapers upon the payment of money by or on behalf of a candidate for office can not under any construction of law be held to be bribery.

The procurement of the services of men to speak either publicly or personally on behalf of any candidate, or to canvass the electorate on his behalf, is not bribery under any reasonable construction of the law.

If the testimony were true that money was offered to Assemblyman Leuch to go upon the floor and vote for the purpose of effecting a quorum it would not constitute bribery. It was the duty of such member to go upon the floor and vote.

The charge of an attempt to bribe H. R. Pestalozzi utterly failed of proof before your committee.

The charge of unlawful dealings with the Milwaukee Free Press utterly failed of proof. It was conceded that Mr. Stephenson owned a controlling interest in that paper and he was certainly entitled to have its support and to sustain his interest in it.

BRIBERY.

The law of Wisconsin relative¹ to bribery is as follows:

SEC. 39. *Bribery of signers to petitions, etc.*—1. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce him to sign any * * * nomination paper * * * and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, or any candidate who shall knowingly cause a nomination paper, or papers, to be signed in his behalf by more than the maximum number of qualified electors provided for his district by subdivision 5 of section 11-5 of this act, shall be guilty of a misdemeanor and upon trial and conviction thereof be punished by fine of not less than \$25 nor more than \$500 or by imprisonment in the county jail of not less than 10 days or more than 6 months, or by both such fine and imprisonment.

Penalties: Caucus and general election laws applicable.—2. Any act declared an offense by the general laws of this State concerning caucuses and elections shall also, in like case, be an offense in primaries and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses and elections, except as herein otherwise provided, shall apply in such case with equal force and to the same extent as though fully set forth in this act.

SEC. 40. *General election laws applicable (secs. 11-25).*—The provisions of the statutes now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, and all other kindred subjects, shall apply to all primaries in so far as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

SEC. 263. *Bribery at elections (sec. 4478).*—The following persons shall be deemed guilty of bribery at elections:

1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give, or lend, or offer, promise or promise to procure or endeavor to procure any money or valuable consideration, to or for any voter, to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or do any such act as aforesaid, corruptly, on account of such voter having voted or refrained from voting at any election.

2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or endeavor to procure any office, place of employment, public or private, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or do any such act as aforesaid, corruptly, on account of any voter having voted or refrained from voting at any election.

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavor to procure the election of any person to a public office, or the vote of any voter at any election.

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise or endeavor to procure the election of any person to a public office or the vote of any voter at any election.

5. Every person who shall advance or pay or cause to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money wholly or in part expended in bribery at any election.

Penalty.—And any person so offending shall be punished by imprisonment in the State prison for a term of not less than six months nor more than two years: *Provided*, That the foregoing shall not be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses authorized by law and bona fide incurred at or concerning any election.

SEC. 264 (sec. 4478a). The following persons shall also be deemed guilty of bribery at elections:

¹ Reference is to "Election Laws of Wisconsin," published by J. A. Frear, secretary of state, 1908.

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money gift, loan, or valuable consideration, office, place of employment, public or private, for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election.

2. Every person who shall, after any election, directly or indirectly, by himself or by any other person in his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; and any voter or other person so offending shall be punished by imprisonment in the county jail not less than one month nor more than one year.

SEC. 266. *Office obtained by bribery, vacant (sec. 4481).*—Any person who shall obtain any office or shall have been elected to any office at any election, at which election he shall have induced or procured any elector to vote for him for such office by bribery, shall be disqualified from holding said office, and he shall be ousted therefrom, and said office shall be deemed and held vacant, to be filled by election or appointment as other vacancies, according to law.

SEC. 294. *Bribery at caucus or convention (sec. 4479).*—Any person being, or seeking to be, a candidate for any office at any election authorized by law who shall give, or promise to give, to any elector or other person any money or thing of value or any pecuniary advantage or benefit for the purpose of inducing or influencing such elector or other person to vote for him in any convention or meeting of the people held for the purpose of nominating any person or persons to be voted for at any such election to make him the nominee of any such convention or meeting and the candidate to be voted for for any office at such election, or who shall so give or promise any such thing to any such person for the purpose of inducing or influencing any person to sign any nomination paper which seeks to have him nominated as a candidate for any office to be so voted for; and any such elector or other person who shall ask, solicit, or receive any money or thing of value or any pecuniary advantage or benefit from such candidate as a consideration or inducement for his vote at any such convention or meeting of the people, or his signature to any such paper, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

SEC. 296. *Bribery in connection with caucus (sec. 4542b).*—Every person who, by bribery or corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at any preliminary meeting or caucus mentioned in sections 11a to 11i, or who shall give or offer to give any valuable thing or bribe to any officer, inspector, or delegate whose office is therein created, or who shall give or offer to give any valuable thing or bribe to an elector as a consideration for some act to be done in relation to such preliminary meeting, caucus, or convention, or who shall interfere with or in any manner disturb any preliminary meeting, caucus, or convention held under said provisions shall be punished as provided in section 4542a.

SEC. 298. *Bribery of voter; disturbance at caucus or convention.*—Every person who, by bribery or corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at any caucus mentioned in this act, or who shall give or offer to give any valuable thing or bribe to any officer, inspector, or delegate whose office is created by this act, or who shall give or offer to give any valuable thing or bribe to any elector as a consideration for some act to be done in relation to such caucus or convention, or who shall interfere with or in any manner disturb any caucus or convention held under the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished in the manner hereinafter provided. (Ch. 341, 1899.)

CHARGES OF CORRUPTION IN THE LEGISLATURE.

On page 2271 of the Report of the State Senate Investigating Committee an attempt is made to summarize the corruption alleged to exist in connection with the election by the legislature, and the first objection is that Mr. Stephenson was elected by the legislature by a majority of three votes while the charges of corruption against him were being investigated by the legislature. This charge seems hardly worthy of serious consideration. It was admitted that he was elected by the legislature, and there is no law or rule that would invalidate the election because of the pendency of these charges. That was a matter for the members of the legislature to consider in determining whether or not they would vote for him.

ABSENT MEMBERS ON MARCH 4.

The next charge is that the election of Mr. Stephenson was made possible by three members, who, it is claimed, at the instigation of Mr. Stephenson's managers and agents, absented themselves from the joint assembly when it became known that their presence would prevent the election of Mr. Stephenson, and it was charged that the absence of these three members had been procured by fraudulent or wrongful means by or on behalf of Mr. Stephenson. It was the only charge of corruption in connection with the election of Mr. Stephenson by the legislature worthy of consideration.

The result of the vote on March 4 consequent upon the absence of these three members is made plain in the testimony of Richard J. White (p. 1324) and by an examination of the journal of the joint assembly on March 4. On that day the total number of votes cast was 123, of which Isaac Stephenson received 63.

The members of the legislature whose absence from the chamber on March 4 was questioned were Messrs. Farrell, Ramsey, and Towne.

On March 3 Farrell voted for Neal Brown, Ramsey voted for George W. Peck, and Towne did not vote at all.

On March 2 Farrell and Ramsey voted for Neal Brown, and Towne voted for Lucknow.

On March 1 neither Farrell, Ramsey, nor Towne voted at all.

On February 27 Ramsey voted for Wall, Farrell voted for Neal Brown, and Towne did not vote at all.

On February 26 Towne voted for Thomas A. Stewart; neither Farrell nor Ramsey seem to have voted.

These instances are cited to show that on the face of the transaction there was nothing unusual in the absence of either of the three absentees on March 4, and nothing in their absence to raise the presumption of corruption therein.

It is true that had these three members been present and voted the total vote would have been 126, and the 63 votes received by Mr. Stephenson would not have elected, but the evidence clearly establishes the fact that Mr. Ramsey, one of the three absentees, was paired with Mr. Fenelon and that such pairs had been universally recognized, so that Mr. Ramsey can not be said to have been absent for any corrupt purpose, nor would his absence from the joint assembly affect the result of the vote. Being paired, he could not have voted. In that event, had Farrell and Towne been present the total vote would have been 125, of which Mr. Stephenson received 63. Sixty-three would have been a majority and would have elected Mr. Stephenson, so that the absence of Farrell and Towne did not affect the result of the election, and it can not therefore be said that the election was brought about through corrupt practices so far as the absence of Farrell and Towne was concerned.

It is not charged that any other member who voted for Mr. Stephenson did so either from corrupt motives or actions on his own part or that he was procured to do so by any corrupt action on the part of any person in the interest of Mr. Stephenson.

The votes cast for Mr. Stephenson were those that had been consistently supporting him throughout the contest. There was no change in his favor upon which any presumption of corruption could be based.

Does the evidence show or tend to show that there were corrupt measures or unlawful methods adopted to secure the absence of either Farrell or Towne?

There has been much sensational testimony introduced before the subcommittee, which was heard largely because such testimony had been received by the legislative investigating committee for the purpose of showing bribery or corrupt methods in connection with the absence of Ramsey, Farrell, and Towne. It was not shown that any money had been traced to either of these men from any source in connection with the matter; but it was claimed that a fund had been raised to be used for corrupt purposes, and that, on the assumption that such fund had been raised, it must at least in part have been used to bring about the absence of these three members of the legislature.

It was claimed that Senator Stephenson had entered into an arrangement with Edward Hines and R. J. Shields for using money for corrupt purposes to be furnished by Mr. Stephenson, and much hearsay testimony was introduced for the purpose of establishing such fact. There can be no question but what the effort to establish any such charge utterly failed. There was no evidence upon which any reasonable conclusion that such corruption fund had been either raised or used could be based.

The charge as to a meeting between the three absentees or some of them and Mr. Regan and Mr. Puelicher at the Plankington House in Milwaukee centered about the testimony taken before the legislative investigating committee of a witness, Frank T. Wagner, who was utterly discredited both at the legislative investigation and by testimony introduced before the subcommittee. It was shown that he is now under sentence in the penitentiary for perjury for having testified to seeing these men in the Plankington Hotel and hearing a conversation upon which the charge that they had entered into a corrupt bargain at that time rested. All the testimony in regard to such a transaction fell to the ground, and was so manifestly without foundation as to call for no consideration except its dismissal.

CHARGE OF BRIBERY OF OTHER MEMBERS.

There seems to have been some remark on the part of Mr. Damochowski and Mr. Lyons as to the tender of money being made them in connection with this election, but on the witness stand they both stated that whatever statements they made in that regard were made in jest and that there was no foundation in truth for them.

Some sensational testimony was introduced in regard to statements made by Mr. R. J. Shields as to having received money or handled money in the interest of Mr. Stephenson in a corrupt manner in dealing with members of the legislature, and members of the senate legislative investigating committee had gone to the office of a certain attorney in Chicago and there met Mr. Wirt Cook of Duluth, Minn., who recited to them some hearsay statements as to conversations and acts which were fully investigated by the subcommittee and found to be entirely without foundation.

We may therefore safely dismiss the charges of corruption in connection with the action of the legislature in electing Mr. Stephenson, whether such election is held to have been on January 26 or on March 4, 1909.

GENERAL CAMPAIGN AND ELECTION.

It appears that Mr. Stephenson contributed \$2,000 to the Republican State central committee. Against this contribution no legitimate objection can be urged. It was not in violation of any law nor for other than general election purposes.

It was also shown by testimony that Mr. Stephenson before the primary gave money to C. C. Wellensgard, Levi H. Bancroft, and Thomas Reynolds, who were candidates for the legislature. These men testified that they used the money in the interest of Mr. Stephenson at the direct primaries. If we eliminate Mr. Stephenson from the direct primaries the contributions which he made to these candidates for nomination and election to the legislature would be in violation of no law. It appears from the testimony that they were at the time voluntary and ardent supporters of Mr. Stephenson regardless of any money which they may have received or which may have been placed in their hands by him for any purpose.

There is not sufficient evidence upon which to base a charge of bribery or any other charge that would affect the validity of the election of Mr. Stephenson in either of these cases.

DIRECT PRIMARY.

The subcommittee, in determining the scope of the investigation, was confronted with the question as to how far, if at all, the charges affecting the candidacy of Isaac Stephenson before the direct primary should be considered.

The State legislative committee had directed its attention principally to the direct primary and the conduct of the candidates therein.

It was doubtless competent for the legislature to provide for direct primaries for the nomination of candidates for the legislature and to place legal restrictions about them to secure the integrity of their elections, but, as herein elsewhere more fully stated, it is not competent for the legislature to provide for the nomination of candidates for the United States Senate at direct primaries.

The status of Mr. Stephenson at such primaries is not comparable to that of candidates for the legislature or for any State office.

The language of the resolution under which the subcommittee acted directs it to report whether "in the election of Isaac Stephenson there were used or employed corrupt methods or practices," and the language of the last paragraph of section 1 of the resolution, bringing the matter to the attention of the United States Senate, strictly construed, refers only to the election.

When we speak of the election of a United States Senator under existing constitutional and legislative provisions we contemplate only the election by the legislature of the State. There is as yet no recognition to be given extra-legislative proceedings in the nature of what is termed "direct primaries," no such method of selection being recognized by any law of the United States.

The subcommittee has, however, brought to the attention of the Senate in the record of its proceedings all the facts obtainable relating to the conduct of the primary. Should it be the judgment of the Senate that such facts are irrelevant, then the consideration would be limited

to matters concerning the election of members of the legislature, and the acts and conduct of members of the legislature and candidates in relation to the election of a Senator by the legislature.

The direct primary, legally speaking, is no part of an election of a United States Senator. The duty of an election of a Senator does not under any law rest with the electorate, but is vested by the Constitution solely in the legislature. The legislature electing had no existence until after the general election. The nomination of such members at the primary vested in the nominees not even an inchoate status. A State may give force and effect to a direct primary law providing for the nomination of candidates for State or minor offices to be elected under the laws of the State, but the legislature has no power to regulate in any manner or to any extent the election of a United States Senator, and there is no such proceeding known under any law of the United States as the nomination of a candidate for the United States Senate.

The question arises, Can any act in contravention of a law that is absolutely void work a forfeiture of any right to an office vested through the compliance with the Constitution and laws of the United States? Did the proceedings preceding and at the direct primary relative to a choice for United States Senator amount to more than a "straw vote"?

The mere fact that the Legislature of Wisconsin had undertaken to include a senatorial selection within the provisions of its direct-primary law, in the absence of power to so legislate, could not affect the validity of an election by the legislature made pursuant to national law: this must be obvious from the fact that the legislature was not in duty bound to elect anyone or consider anyone a candidate for election because of the action of the direct primary. It might have ignored such action altogether, and its having done so would not in any way affect the validity of its action.

There is no law of the United States recognizing such a thing as "candidacy" for the United States Senate, and no legal status is given to the frame of mind constituting an intention on the part of a man or his friends that he become a candidate before the legislature.

The question also arises as to the period when a man can be charged with responsibility for his acts so as to affect the validity of his subsequent election by the legislature.

It frequently occurs that none of the men who are avowed candidates are chosen. The matter rests solely with the legislature, and under existing laws one legislature can not dictate the rule governing a subsequent legislature in the manner of its procedure relative to matters resting entirely within its discretion.

It would be entirely within the power of a legislature, charged with the responsibility of electing a United States Senator before proceeding to elect a Senator, to repeal any legislation enacted by a previous legislature which placed a limit upon or directed its action.

It seems from this consideration of the question we must conclude that the direct-primary proceedings can not be held to affect the validity of an election by the legislature.

FAILURE TO FILE PROPER EXPENSE ACCOUNT.

The fifteenth specific charge is based upon the failure or neglect of Isaac Stephenson to make and file an expense account under the laws of Wisconsin. This requirement is under section 270 of the election laws which provides that every person who shall be a candidate before any convention or at any primary or election to fill an office for which a nomination paper or certificate of nomination may be filed, shall, within thirty days after the election held to fill such office, make out and file with the officer empowered by law to issue the certificate of election to such office or place, a statement in writing, etc., and that any person failing to comply with this section shall be punished by fine of not less than \$25 or more than \$500. This being a penal statute, the validity of an election could not be affected by the failure to comply with it.

GENERAL COMMENT.

The rule adopted by the several candidates for said office seems to have been unanimous in regard to filing expense accounts.

Senator Stephenson's expense account was \$107,793.05.

S. A. Cook's expense account was \$42,293.29.

William H. Hatton's expense account was \$26,413.

Francis E. McGovern's expenditure was \$11,063.88.

Neal Brown's expense account was \$1,075.87.

The total expenditures of all candidates for the office of United States Senator before the primary election was about \$225,000.

Less than one-half of the voters at the general election voted at the primary. The total vote cast in the Republican primaries for the nomination of United States Senator was 182,915, being 81 per cent of the total primary vote cast by all political parties for Senator.

The total vote cast in the Democratic Party for United States Senator was 37,479, or about 17 per cent of the total primary vote of all parties cast for Senator, and about 23 per cent of the total Democratic vote cast for governor at the general election.

Mr. Stephenson, a Republican candidate, received 56,909 votes.

Mr. Cook, a Republican candidate, received 47,825 votes.

Mr. McGovern, a Republican candidate, received 42,631 votes.

Mr. Hatton, a Republican candidate, received 35,552 votes.

Mr. Brown, a Democratic candidate, received 24,937 votes.

Mr. Hoyt, a Democratic candidate, received 12,227 votes.

Mr. Rummel, Social Democratic candidate, received 4,047 votes.

On the basis of the total vote received by each senatorial candidate and the total cost of each candidate's campaign:

Mr. Stephenson spent \$1.89 for every vote cast for him.

Mr. Cook spent \$0.88 for every vote cast for him.

Mr. Hatton spent \$0.85 for every vote cast for him.

Mr. McGovern spent \$0.26 for every vote cast for him.

Mr. Brown spent \$0.42 for every vote cast for him.

Mr. Hoyt spent \$0.16 for every vote cast for him.

And there was spent in behalf of Mr. Rummel, the Socialist Democratic candidate, about \$1 per vote.

Were it possible to hold that Mr. Stephenson was subject to the same restrictions under the laws of Wisconsin as a candidate for a State office, we would feel compelled to enter more fully upon the nature and character of the expenditures made by him and on his behalf during the primary campaign.

The amount of money expended by Mr. Stephenson, Mr. Cook, Mr. Hatton, and Mr. McGovern in the primary campaign was so extravagant and the expenditures made by and on behalf of these gentlemen were made with such reckless disregard of propriety as to justify the sharpest criticism. Such expenditures were in violation of the fundamental principles underlying our system of Government, which contemplated the selection of candidates by the electors and not the selection of the electors by the candidate.

Regardless of any statute requiring that strict accounts be kept of money expended by and on behalf of candidates, a candidate and every man representing him should know that public opinion would expect the parties to place and maintain themselves in a position so that if any of their acts were questioned they could justify such acts to the extent of giving every detail in regard thereto.

While I do not believe that the law of Wisconsin could constitute any man a candidate or place him in the position of and under the responsibilities of a candidate for an office over which the State had no control and which was not to be filled under any law of the State, yet I feel impelled to criticize the acts of those in charge of the expenditure of the money of men who are called candidates for the Senate, and especially of Mr. Stephenson, in the irresponsible and reckless manner in which they disbursed the money furnished them by Mr. Stephenson during the period of the primary campaign.

The failure to keep detailed accounts, the destruction of memoranda, the shifting of records and papers concerning the campaign from one place to another, the adoption of mysterious methods and roundabout ways in regard to matters that might just as well have been performed in open daylight in the presence of the people, would go far toward creating the impression that there was some occasion for Mr. Stephenson's representatives to avoid candor and to obscure conditions.

The subcommittee has gone carefully through all of the letters and correspondence which had been in the hands of Mr. Stephenson and his managers and which had been shifted from Milwaukee to Marinette and from Marinette to points in Michigan, and back again, under most unusual and mysterious circumstances. These letters are not out of the ordinary political correspondence of campaign managers and citizens whose votes, influence, or services are solicited in behalf of a candidate.

The letters transmitting and acknowledging the receipt of money have been considered separately from those giving information in regard to political conditions and instructions in regard to how political work shall be done. There is nothing in the letters transmitting or acknowledging the receipt of money that would seem to add anything to the information given by witnesses in explaining these expenditures so far as they could explain them. The subcommittee has not thought it necessary to print this correspondence, which is in evidence and might be held to constitute a part of the record of the investigation. In our judgment, it would add nothing in the way of

assistance to the committee in ascertaining the facts necessary and proper to be considered in connection with the investigation.

Were a candidate for a State office in Wisconsin to conduct a campaign in the manner in which the campaign of Mr. Stephenson, and of other men who sought election to the United States Senate, were conducted, it would be very difficult to justify such conduct under the laws of the State.

The joint senatorial primary investigating committee in its report (submitted Mar. 18, 1910, but never acted upon), after reviewing the testimony, says:

Your committee believes that the Republican senatorial candidates and their managers did not deliberately plan to violate the law, but in their desire to win these candidates, particularly Stephenson, Cook, and Hatton, conducted their campaigns with the idea of getting results, and men were hired and money spent, and State officials and employees and members of the legislature were used without much regard to propriety. All of the Republican candidates probably spent all they could afford and the amount spent by the different candidates was probably limited more by their ability to spend than their appreciation of the moral effect of the expenditure of such large sums of money to secure the nomination.

This committee evidently looked upon the result of the direct primary as shown by the vote cast therein for each of the men who sought election to the United States Senate as constituting a legal nomination. I entertain a different view of that matter and look upon the primary nomination as a mere expression of a choice without legal effect, and do not recognize such expression as binding upon the legislature.

CONCLUSION.

The testimony clearly shows that the candidates felt compelled to spend more money than they wanted to spend. The pressure upon them from those who were undertaking to manage their campaigns seems to have been very great and persistent, but I can find nothing in the testimony nor in the circumstances or conditions surrounding the senatorial contest which resulted in the election of Mr. Stephenson that in my judgment would justify the committee in recommending that the seat be vacated, or that he be declared not legally elected to the United States Senate; and therefore I recommend that the Senate find that the charges preferred by the Legislature of Wisconsin against Isaac Stephenson, a Senator of the United States from the State of Wisconsin, are not true, and that Isaac Stephenson be acquitted of such charges.

W. B. HEYBURN.