

IN THE SENATE OF THE UNITED STATES.

JULY 15, 1886.—Ordered to be printed.

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

REPORT :

*The Committee on Privileges and Elections, to whom were referred the resolutions of the senate and of the house of representatives of the general assembly of the State of Ohio, asking an investigation into the charges affecting the election of Hon. Henry B. Payne as a Senator from that State, report :*

(1) On April 27, 1886, the Senate referred to your committee—

The testimony taken before the select committee of the house of representatives of Ohio, and the report of said committee, as to charges against the official integrity and character of certain members of said house of representatives, in connection with the election of Hon. Henry B. Payne as United States Senator.

(2) On May 20, 1886, the Senate also referred to your committee the following copy of the resolutions of the house of representatives of the State of Ohio in respect to the election of the Hon. Henry B. Payne as a Senator from that State, viz :

Whereas it is the precedent in the United States Senate that charges of bribery must be directly made to warrant a committee of said body in proceeding to investigate the title of any United States Senator to his seat : Therefore,

*Be it resolved by the house of representatives of Ohio,* That in the investigation made under house resolution No. 28 ample testimony was adduced to warrant the belief that the charges heretofore made by the Democratic press of Ohio are true, to wit, that the seat of Henry B. Payne in the United States Senate was purchased by the corrupt use of money ; and

*Further resolved,* That the honor of Ohio demands, and this house of representatives requests, that the said title of Henry B. Payne to a seat in the United States Senate be rigidly investigated by said Senate.

(3) The Senate also referred to your committee the following resolution of the Senate of Ohio :

Whereas by common report, suggested and corroborated by the public press of the State without respect to party, and by a recent investigation of the house of representatives, the title of Henry B. Payne to a seat in the United States Senate is vitiated by corrupt practices and the corrupt use of money in procuring his election ; and

Whereas it is deemed expedient, in order to secure a thorough investigation of his said election as Senator by the United States Senate, that the belief of the general assembly in this regard be formulated in a specific charge : Therefore,

*Be it resolved,* That in the opinion of the general assembly, and it so charges, the election of Henry B. Payne as Senator of the United States from Ohio in January, 1884, was procured and brought about by the corrupt use of money paid to or for the benefit of divers and sundry members of the sixty-sixth general assembly of Ohio, and by other corrupt means and practices, a more particular statement of which cannot now be given.

*Resolved,* That the Senate of the United States be, and the same is hereby, requested to make a full investigation into the facts of such election, so far as pertains to corrupt means used in that behalf.

(4) The Senate also referred to your committee the following resolutions of the Republican State Central Committee of Ohio:

REPUBLICAN STATE COMMITTEE ROOMS,  
Columbus, Ohio, May 5, 1886.

Whereas it has been shown to our satisfaction by the testimony taken by the committee of the Ohio house of representatives, under house resolution No. 28, and from other sources, so strongly as to induce us to believe and charge that the election of Henry B. Payne to the Senate of the United States was secured by bribery, fraud, and corruption; and

Whereas the testimony so taken has been by the house of representatives reported to the Senate of the United States, for such action as that body may see fit to take on account thereof; and

Whereas the facts so established reflect upon the good name of the State of Ohio, and affect in morals, as well as in law, the validity of the title of Mr. Payne to his seat in the Senate: Now, therefore,

*Be it resolved by the Republican Central Committee of Ohio*, That in the name of all honest people in the State of Ohio, and for the credit of the hitherto unsullied name and reputation of our State, the Senate of the United States be, and hereby is, respectfully requested to prosecute such investigation into the matters suggested by said report, and the charges herein preferred, and to take such action thereon as may be necessary to relieve our State from the disgrace which it now rests under, and to do equity and justice to all concerned; and

*Resolved further*, That the chairman of this committee is directed to forward an authenticated copy of this resolution to Hon. George F. Hoar, chairman of the Committee on Privileges and Elections of the United States Senate.

We hereby certify the foregoing to be a true copy of the preamble and resolution adopted by the Republican State Central Committee of Ohio, at a regular meeting held in the city of Columbus, Ohio, this 5th day of May, 1886.

JAS. E. LOWRY,  
Chairman,

JOSHUA K. BROWN,  
Secretary.

The testimony given before the select committee of the house of representatives of Ohio was taken under the authority of the following resolution adopted by the House January 13, 1886:

Whereas the Cincinnati Commercial-Gazette of January 12, 1886, contains a printed statement, on the authority of S. W. Donavin, alleging grave charges against the official integrity and characters of members of this house, namely, Hon. D. Baker, Hon. P. Hunt, Hon. W. A. Schultz, and Hon. Mr. Ziegler, so definite and precise in statement as to call for immediate action in order to vindicate the reputation of members of this house: Therefore,

*Resolved*, That a select committee of five be appointed to inquire into all the facts of the charges so alleged, and report their conclusions to this house at as early a date as possible; and in the prosecution of this inquiry said select committee are empowered to send for persons and papers and to examine witnesses under oath.

The extent and character of the investigation made by the select committee, under the above house resolution, is described by the select committee in their report as follows:

Although but four persons, and they members of the present house, are named in the resolution, and the committee is required by its terms to investigate and report concerning them only, it was found necessary to extend the inquiry beyond this limit, in order to gain something like a comprehensive view of the situation pertaining to said election.

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Whenever our attention was called to anything which indicated the probable employment of improper means to gain support, we followed the clues presented, on the theory that we were not only authorized, but in duty bound, to pursue any matter that promised, even remotely, to show the use of such means in connection with the election, because the discovery of one important fact, although having no immediate bearing upon the charge against the person named in the resolution, might lead to the discovery of facts having such bearing. And furthermore, and upon the same theory, our inquiries were not confined to the technical rules of legal proof, but the committee availed itself of any source of information—admitted hearsay

statements, and even the opinions of witnesses. But we consider in making this report no facts should be stated which are not sustained by testimony upon which a legislative body might base further action.

The conclusion reached by the select committee after the examination of the fifty-five witnesses, is also stated in their report as follows:

Although, as stated in the outset, the testimony developed nothing of an inculpatory character concerning the members of this house named in the resolution of inquiry, we believe that circumstances surrounding the election of Henry B. Payne, as one of the Senators to represent the State of Ohio in the Congress of the United States, as presented by the testimony, are such as to warrant us in recommending that an authenticated copy of the testimony and report be transmitted to the President of the United States Senate for the information of the body of which Senator Payne is a member, and for such action as it may deem advisable.

Upon the presentation of the above report the house of representatives of Ohio adopted the following resolution, on the 16th of April, 1886:

*Resolved by the house of representatives of the sixty-seventh general assembly of the State of Ohio,* That the clerk of the house be, and he is hereby, directed to transmit a copy, duly authenticated, of the testimony taken by the select committee appointed in pursuance of house resolution No. 28, and of the report of said committee to the President of the United States Senate, to be by him presented to that body.

The testimony taken by the select committee is contained in Senate Miscellaneous Document No. 106. It is not denied that the investigation was had, and the testimony taken in secret session of the select committee with closed doors, and that the house of representatives refused to print the testimony. If any examination was made of the testimony by the members of the house, except those on the select committee, no expression of any opinion, conclusion, or judgment thereon was made by the house, by resolution or otherwise, and it was resolved by the house, in accordance with the recommendations of the select committee, to transmit the testimony to the senate for its consideration and action *without the formulation of any charge.*

On May 18, 1886, over a month after the adoption of the resolution directing the transmission of the testimony without any conclusions thereon, and requesting nothing but the consideration of the Senate and such action as it thought proper, the *same* house of representatives, composed of the *same* members, after reciting that—

Whereas it is the precedent in the United States Senate that charges of bribery *must be directly made to warrant a committee of said body in proceeding to investigate the title of any United States Senator to his seat:*

*Resolved,* That in the investigation made under house resolution No. 28 ample testimony was adduced to warrant the belief that the charges heretofore made by the Democratic press of Ohio, that the seat of Henry B. Payne in the United States Senate was purchased by the corrupt use of money, *are true.*

The select committee who had confronted and examined the fifty-five witnesses failed to discover that the testimony was "ample" or strong enough to create the "belief" that any such charges were true; and all the committee could say, and all the house could concur in saying, *on the testimony, when it was fresh in their recollection* (if it had ever been read by any member), was, "we believe that *circumstances surrounding the election of Henry B. Payne as United States Senator, as presented by the testimony,* are such as to warrant us in transmitting to the Senate an authenticated copy of the testimony, without recommendation, or the expression of any opinion or belief as to what the testimony established.

The charge made by the house for the first time on the 18th of May, 1886, nearly two years and a half after the election of Senator Payne, that his seat was purchased by the corrupt use of money, is founded *expressly and solely* on the testimony taken under house resolution No. 28.

The resolution of the senate of Ohio adopted on May 14, 1886, states:

That in the opinion of the general assembly, and it [the general assembly] so charges, the election of Henry B. Payne as Senator of the United States from Ohio, in January, 1884, was procured and brought about by the corrupt use of money paid to or for the benefit of divers and sundry members of the sixty-sixth general assembly of Ohio, and by other corrupt means and practices, a more particular statement of which cannot now be given.

The above resolution was not a "joint," but a "Senate," resolution, although it undertakes to express the opinion of the general assembly of Ohio four days prior to the passage by the house of its own resolution on the same subject. The resolution of the Ohio senate is based *expressly and solely* on "common report suggested and corroborated by the public press of the State without respect to party, and by a recent investigation of the house of representatives." It nowhere appears that the testimony taken by the select committee of the House was ever reported to the Senate, or otherwise subjected to its examination.

The Republican State Central Committee of Ohio, at a regular meeting held in the city of Columbus on the 5th day of May, 1886, preferred the charge "that the election of Henry B. Payne to the Senate of the United States was secured by bribery, fraud, and corruption," and such charge is made on "the testimony taken by the committee of the Ohio house of representatives under house resolution No. 28, and from *other sources*."

Your committee are fully aware of the transcendent importance of throwing around the Senate of the United States the highest safeguards against seating or allowing any man to occupy a seat in that body whose title thereto was procured by bribery, fraud, or corruption. It is an undeniable public fact, causing general and serious apprehension among patriotic and thoughtful people, that in all representative governments founded on popular suffrage the indiscriminate and frequently the corrupt use of money by political parties, without exception, and their candidates, has become one of the most powerful and dangerous instrumentalities in elections. In the United States especially the power inseparable from great wealth in the hands of individuals and corporations has been, and we fear will always be, improperly and often corruptly exerted to produce successful results in elections. All parties invite, and as a rule demand, the contribution of money to control elections, and its influence has been found to be so potential that its use is generally accepted by public opinion as being indispensable and permissible to insure the success of parties and their candidates.

The charge in the case before us is made by the two houses of the general assembly of Ohio, acting separately, and by the Republican State central committee of Ohio, that Henry B. Payne obtained the seat he now occupies in the Senate of the United States by the corrupt use of money, or, to be more specific, by bribery of members of the legislature. The gravity of the charge and the respectability and responsibility of those who make it are conceded, and your committee are deeply sensible of the obligation they are under to examine and decide the question referred to them as one of momentous public importance.

It is manifest that the charge as it comes to the Senate has its origin and support in the testimony taken by the Ohio house, under resolution No. 28, and forwarded to the Senate and printed in Mis. Doc. No. 106.

It is equally manifest to a majority of your committee that no consideration of duty, law, justice, public policy, or propriety requires the Senate to authorize an examination into the title of a Senator to his

seat upon the naked charge of the legislature of his State that his election was procured by bribery of the members by whom he was elected, without informing the Senate of any fact or evidence or witness to establish or create reasonable ground to support the charge.

It would be unprecedented and inexplicable if any legislature were to make such a grave charge without any preliminary examination into its truth or justification, and your committee feel constrained to believe that it is absolutely certain that no such charge will ever be made by any legislature without an investigation and without evidence to verify the charge; and that it is equally certain that no legislature would request the Senate to enter upon such examination without furnishing the facts and witnesses to create a reasonable belief that the charge could be established by legal evidence if the Senate were to order an investigation. The sitting member was seated on credentials under the seal of his State showing that he had been legally and regularly elected by the legislature of his State. These credentials were read in the hearing of the Senate and remained on the files of the Senate sufficient time to allow those who now assail the validity of the election to make their charges and ask for an investigation by the Senate.

The main facts and circumstances to which so much importance has been attached to create belief and excite suspicion that money was corruptly used in the election, and that the Senate should make the investigation, were as public and well known when Senator Payne was seated as they are to-day. Why were two years and over allowed to pass without question or action by those who seem now to be so confident and persistent in charging foul play in the election of Senator Payne? The legislature of Ohio exercised its constitutional power of electing Henry B. Payne to the Senate of the United States. The legislature that elected him had unquestioned jurisdiction of that subject, and when the evidence of that election in the manner prescribed by the law and the Constitution is presented in the credentials under the seal of the State every presumption in favor of the validity of the election must be indulged by the Senate.

But it may be, and has been, urged that the two houses, acting separately, of another legislature of Ohio, send us resolutions, passed in due form, in which the specific charge is made that the members of the legislature that elected Mr. Payne, or some of them, were bribed with money by his friends, and that his election was procured by the corrupt use of money. It must be conceded that the two houses of the Sixty-seventh General Assembly of Ohio had no power or authority over the election or the title of Henry B. Payne as United States Senator. The two houses having no jurisdiction over the subject, it is manifest that as a matter of right or authority they had no more claim upon the consideration of the Senate as to the charge contained in their resolutions than the State Republican central committee. The only difference is in the number and position of the members of the several bodies who present the charge and request an investigation. The Sixty-sixth General Assembly of Ohio had power and jurisdiction to confer upon Henry B. Payne his title as a United States Senator. The only power that exists anywhere to try the validity of that title and to annul it is vested in the Senate of the United States. Would the Senate order an investigation of the title of a Senator to his seat on a charge made by any body of men, whatever might be their dignity or respectability, wholly unsupported and unaccompanied by any fact, evidence, or reason to make out the charge or to create a reasonable belief that the

charge can be established and the sitting member deprived of his seat by an investigation?

A majority of your committee are constrained to believe that if such naked, unsupported charges by one man or any number of men could involve the Senate and any Senator in a trial of his right to his seat, such a precedent and practice would become an agency of persecution by the political and personal enemies of any Senator, and seriously impair the independence and standing of the Senate. No expectation was entertained by those who make the charges in the present case that they would receive a moment's consideration if presented without being accompanied by the testimony upon which the charge is founded. Then the question is, has enough proof been adduced to justify the Senate in going into a trial of the right of Senator Payne to his seat?

In the case before your committee an investigation was ordered as to charges against four members of the Ohio house of representatives, and although the authority of the select committee was limited to the four inculpated members, yet the select committee enlarged the scope of its examination and explored the whole field of inquiry the Senate is now requested to enter for the discovery of evidence of which your committee has no information upon which they can act, as having any real existence or legality, to make out reasonable ground for belief that the charge can be sustained by authorizing another investigation.

Your committee are of the opinion that to deprive a sitting member of the Senate of his seat, the Senate must be satisfied by legal evidence that he was *personally* guilty of bribery, or that he was *personally* connected with the bribery or the corrupt use of money to procure his election, or that he had *personal* knowledge of such corrupt use of money and personally sanctioned or encouraged such use thereof to insure his election. The legal effect of such personal guilt of the sitting member on his election your committee do not decide, some members being of opinion that whether it extended to the corruption of the majority of the nominating caucus or the majority of the legislature of the State which secured his election is immaterial on the trial of the validity of his title or on the question of his expulsion, as the single personal act of bribery or other corrupt use of money by the sitting member, as stated, to procure his election, would be sufficient in the opinion of some of us to invalidate the title he claims to have acquired, and would justify his expulsion from the Senate.

Your committee are also of the opinion that, if the evidence fails to show that the sitting member was guilty of the bribery of any member of the caucus or the legislature, or had any personal knowledge or agency in the bribery, or the corrupt use of money to secure his election, then the Senate must be satisfied by legal evidence that a sufficient number of the members of the legislature were bribed by the friends of the sitting member to secure the votes of enough members of the legislature to insure his election, and that without the votes thus corruptly obtained the sitting member would not have been declared elected.

It is conceded that the Democrats had a majority in the sixty-sixth general assembly of Ohio of thirty-six members, and that Henry B. Payne was the only Democrat voted for by the members of the legislature when he was elected to the Senate.

The charge was preferred against Henry B. Payne by the senate and house acting separately in the sixty-seventh legislature of Ohio, which was a different legislature from that which elected Henry B. Payne, and was composed at the time the charges were made of a majority of Republicans in each house.

It is also conceded that prior to the day when the law required the sixty-sixth general assembly of Ohio to vote for the election of a United States Senator a caucus of the Democratic members of the legislature was held to nominate some person for whom the Democratic members were to vote in the general assembly, and that in such caucus Henry B. Payne received 46 votes, Durbin Ward received 17, and George H. Pendleton received 15 votes; and that Mr. Payne having received over a majority of the 79 Democrats in the caucus, he was declared nominated. The charge is that money was corruptly used by being paid to or for the use of divers members of the caucus to secure their votes, *in the caucus*, for Mr. Payne's nomination.

When your committee met to consider the matter referred to them, the first act of the committee was to comply fully with the first request of the Ohio house, and that was to make an examination of all the testimony taken by the select committee of the Ohio house of representatives under its resolution No. 28, the report of that select committee being all that was then before your committee. After several days' examination of the testimony the chairman of your committee, at our next meeting, made his report as copied in the minority report, which is, in effect, that after careful reading of the testimony contained in Mis. Doc. No. 106, no evidence, opinion, or statement whatever was found personally inculcating Henry B. Payne in any way in any bribery or the corrupt use of money in his election to the Senate. Neither did such examination show that enough had been found in the testimony to justify the charge that the election of Mr. Payne was procured by the corrupt use of money, or that there was anything in the testimony taken under the Ohio house resolution No. 28 to justify your committee in reporting in favor of a further investigation by the Senate. On the contrary, it was agreed that the testimony was insufficient to support the charge and insufficient to justify the committee in reporting to the Senate that the title of Senator Payne to his seat ought to be investigated. This action met the entire demand first made by the Ohio house of representatives. About the time that your committee considered its labors terminated, the supplemental resolutions of the two houses of the Ohio legislature and of the Republican State Central Committee made their appearance in the Senate and were referred to your committee, and soon after this last reference a request was made by the Hon. Mr. Little, an able and distinguished lawyer and representative of Ohio in Congress, that he be permitted to appear in person before your committee in behalf of the State Republican Central Committee to make known to your committee by argument and evidence that the title of Senator Payne to his seat in the Senate ought to be investigated. Permission was granted and full time allowed for the hearing of Mr. Little. Then came another request from the Hon. Mr. Butterworth, another able and distinguished lawyer and representative from Ohio in Congress, that he be permitted to appear before your committee for the same purpose, which was granted, and full time given for the hearing of Mr. Butterworth. These distinguished representatives explored all the sources of information that promised any supply of fact, argument, or speculation, whether the evidence was legal or mere rumor, or hearsay, found in the report of the special committee or elsewhere, to convince your committee that another investigation of the right of Senator Payne to his seat should be authorized by the Senate.

The able and plausible arguments of Mr. Little and Mr. Butterworth were founded confessedly and almost entirely upon the evidence taken by the select committee of the Ohio house of representatives, which had

been pronounced by the select committee itself as wholly insufficient to establish in the least degree any charge that had been made against the four members of the Ohio house named by the correspondent of the Cincinnati Commercial Gazette, and which your committee had also decided was insufficient to support the charges preferred by the two houses of the Ohio legislature on that testimony, notwithstanding the confident opinion expressed in their supplemental resolution that the testimony taken by their select committee was "ample" to establish the charge as to how Senator Payne's election was procured.

A majority of your committee report that the testimony taken by the select committee, under resolution No. 28, was not supplemented or strengthened by any additional legal evidence, and no new information, not contained in Mis. Doc. No. 106, was brought to the attention of your committee that any court would not hold to be merely cumulative and speculative and of like character with that taken by the select committee of the Ohio house, and insufficient by itself, or in connection with the other testimony, and all treated as true, just as it might be shown to be if another investigation were ordered by the Senate, to justify your committee in reporting in favor of directing a trial by the Senate of the right of Mr. Payne to his seat.

Your committee having made a protracted and exhaustive examination of the matters referred to them, report.

First. That Henry B. Payne has not been charged with having anything to do personally, or with having any personal knowledge of, connection with, or participation in any act, or anything that may have been done, or charged as having been done, that was wrong, criminal, immoral, or reprehensible in his election; that no member of your committee, and no witness, representative, or other person, has expressed the opinion or intimated any belief or suspicion that Henry B. Payne is or was connected in the remotest degree, by act or knowledge, with anything that was or may have been wrong, or criminal, or immoral in his election.

Second. A majority of your committee report that on the whole case as presented to them they recommend that the Senate make no further investigation of the charge involving the right of Henry B. Payne to his seat.

Your committee ask to be discharged from further consideration of the matters referred to them, and that the whole subject be indefinitely postponed.

JAMES L. PUGH.  
ELI SAULSBURY.  
Z. B. VANCE.  
J. B. EUSTIS.



## VIEWS OF MR. TELLER, MR. EVARTS, AND MR. LOGAN.

Upon undisputed facts it appears that of the general assembly of Ohio, as in session and constituted in January, 1884, each house contained a majority of members of the Democratic party; that at a joint caucus of that party held on Tuesday, January 8, upon the first ballot, votes were cast, for Mr. Booth, one vote; for Mr. Pendleton, fifteen votes; for Mr. Ward, seventeen votes; and for Mr. Payne, forty-six votes; thus showing a majority in the caucus of thirteen for Mr. Payne over the united vote of all the other candidates. In regular conduct of the election of Senator by the legislature, Mr. Payne was elected, and his credentials were received by the Senate of the United States at the session of March, 1885, and Mr. Payne since then has held, and now holds, a seat as Senator from Ohio in this body. No action was taken by or before the legislature which elected Mr. Payne calling in question the validity of his election or the conduct of the same in the canvass, the caucus, or the legislature itself.

A new legislature, as in session and constituted in January in the present year, showed a majority of the general assembly of the Republican party, and on the 13th day of January the house of representatives adopted the following resolution:

Whereas the Cincinnati Commercial-Gazette of January 12, 1886, contains a printed statement, on the authority of S. K. Donavin, alleging grave charges against the official integrity and characters of members of this house, namely, Hon. D. Baker, Hon. P. Huit, Hon. W. A. Schultz, and Hon. Mr. Zeigler, so definite and precise in statement as to call for immediate action in order to vindicate the reputation of members of this house: Therefore,

*Resolved*, That a select committee of five be appointed to inquire into all the facts of the charges so alleged, and report their conclusions to this house at as early a date as possible; and in the prosecution of this inquiry said select committee are empowered to send for persons and papers, and to examine witnesses under oath.

The select committee commenced the taking of testimony, under this inquiry, on the 20th January, and concluded the same on the 6th April last. Two reports were made to the house, one presented by a majority of three, and the other by the minority of two. On April 16 the house adopted the following resolution:

*Resolved by the house of representatives of the Sixty-seventh General Assembly of the State of Ohio*, That the clerk of the house be, and he is hereby, directed to transmit a copy, duly authenticated, of the testimony taken by the select committee appointed in pursuance of house resolution No. 28, and the report of said committee to the President of the United States Senate, to be by him presented to that body.

The President *pro tempore* of the Senate laid before the Senate the testimony and reports, and the same were referred to the Committee on Privileges and Elections.

The majority report of the committee of the Ohio house presented as their "conclusion" the following statement:

Although, as stated in the outset, the testimony developed nothing of an inculpat-  
ing character concerning the members of this house named in the resolution of in-

quiry, we believe that circumstances surrounding the election of Henry B. Payne as one of the Senators to represent the State of Ohio in the Congress of the United States, as presented by the testimony, are such as to warrant us in recommending that an authenticated copy of the testimony and report be transmitted to the President of the United States Senate for the information of the body of which Senator Payne is a member, and for such action as it may deem advisable.

The minority report presented as their conclusion the following statement:

The minority of your committee, therefore, find, in conclusion, that there has been no testimony going to show that any unusual or improper methods were resorted to by any person with any member of the Sixty-sixth General Assembly to induce them to support, or that any member was unduly influenced to support, Hon. Henry B. Payne for either his nomination or election to the United States Senate.

It appears that when the select committee of the Ohio house of representatives was entering upon the inquiry before them, the following correspondence took place between Mr. Payne and Mr. Cowgill, the chairman of the select committee, and that Mr. Payne was never advised by the committee that "any testimony tending to inculcate him in any degree with any questionable transaction" had been received, or any opportunity was afforded him of appearing before the committee:

UNITED STATES SENATE,  
*Washington, D. C., January 22, 1886.*

Hon. THOMAS A. COWGILL,  
*Chairman, Columbus, Ohio:*

SIR: As one branch of the general assembly has appointed a special committee, of which you are the chairman, to investigate the conduct of the Democratic caucus which in January, 1884, nominated a candidate for United States Senator, and as the matter is thus raised to the plane of respectability, and placed in charge of intelligent and honorable gentlemen, I propose to give it appropriate attention. For myself, I invite and challenge the most thorough and rigid scrutiny. My private correspondence and books of account will be cheerfully submitted to your inspection if you desire it. I only insist, in case any testimony is given which in the *slightest degree* inculcates me, I may be afforded an opportunity of appearing before the committee.

I am, very respectfully, your obedient servant,

H. B. PAYNE.

COLUMBUS; OHIO, *January 25, 1886.*

Hon. H. B. PAYNE,  
*United States Senate, Washington, D. C.:*

SIR: I acknowledge the receipt of your favor of the 22d instant, wherein you note the fact that a special committee of the Ohio house of representatives has been appointed to investigate the conduct of the Democratic caucus which in January, 1884, nominated a candidate for United States Senator, and you also declare that you propose to give the investigation appropriate attention.

In reply, I have to say that the resolution to which you refer recites the fact that allegations of bribery, published on authority of S. K. Donavin, are of so grave and positive character as to call for immediate action in order to vindicate the reputation of members of the present general assembly. It directs the special committee to "inquire into all the facts of the alleged bribery, and report their conclusions thereon to the house."

If in the prosecution of this inquiry any testimony tending to inculcate you in any degree with any questionable transaction be received, I assure you that your request to appear before the committee in such event will be most cordially and fully acceded to.

Very respectfully,

THOMAS A. COWGILL,  
*Chairman.*

Instead of attempting a selection or summary of the testimony transmitted to the Senate by the Ohio house of representatives, for the illustration or support of our views and conclusions as to the proper disposition of the matter referred to the Committee on Privileges and Elections, we have thought it eminently just to accept as the basis of our observations the two careful and intelligent presentations of the testimony to the Ohio house of representatives by the majority and minority reports of the select committee.

Your committee were addressed by two honorable members of the house of representatives from Ohio, Mr. Little and Mr. Butterworth, in exposition and enforcement of the testimony, and of the just rules and principles which should govern your committee in their disposition of the matter before them. Subsequently, and while the committee was deliberating upon the case, as submitted to them, these honorable gentlemen placed before your committee certain suggestions in the nature of corroborative or cumulative evidence, which we append, with the majority and minority reports to which we have referred, to accompany our report. These supplementary suggestions we have justly given this prominence to, as indicating in nature, if not in substance, what might be shown in testimony if an investigation should be entered upon by the Senate.

The only constitutional rights, powers, and duties which can sustain, or properly induce, an investigation such as is presented for the consideration of the Senate by the honorable house of representatives of the State of Ohio, arise from two separate and independent clauses of the Constitution:

By the first clause of section 5 of Article I of the Constitution each House of Congress is made "the judge of the elections, returns and qualifications of its own members."

By the second clause of the same section each House may, "with the concurrence of two-thirds, expel a member."

As these two ends alone limit the basis and object of any investigation proposed, either for invalidating the election of a Senator or expelling from the Senate a duly elected and qualified member of it, a scrutiny of the grounds, in fact, upon which such action is demanded, in any case arising, from the Senate, requires an ascertainment whether the scope of the proposition and the testimony, presented or reasonably assured, would justify the ultimate action of the Senate under one or the other of these clauses of the Constitution. We do not understand that the house of representatives of Ohio presents any case upon the testimony taken or imagined to be accessible to any investigation by the Senate, or upon any allegation of the existence of facts suspected, though not probable, as would affect Mr. Payne with such personal delinquency or turpitude as would invite or tolerate his expulsion from the Senate for his participation in the transaction which resulted in his election. The examination of the testimony suggests no support for such an imputation, and the course of the select committee in not giving Mr. Payne an opportunity to be heard before them precludes any intimation that such a notion was entertained for a moment by that committee or the Ohio house of representatives.

We do not understand that any member of the Committee on Privileges and Elections has harbored or expressed the idea that the testimony taken, or suggested as accessible or possible, touches the subject of this personal inculpation of Mr. Payne. We shall, therefore, confine

our further discussion of the matter, as presented for the investigation or action of the Senate, to the question arising upon the validity of Mr. Payne's election and the declaration of his seat in the Senate vacant for such cause.

It is, no doubt, supposable that an election may be vitiated by fraud, corruption, and bribery without the member unseated being accused even of personal participation in the fraud, corruption, or bribery by which his election was compassed. If the election is thus vitiated, the member's seat cannot be saved by his personal exculpation and vindication. The integrity of the election, and not of the member, is in question under this clause of the Constitution.

But, on the same reason, the investigation, which now deals with the election as vitiated, and not the member as innocent, must reach the proof that the fraud, corruption, or bribery embraces enough in number of the voting electors to have changed, by these methods, the result of the election. If these corrupted votes gave the innocent member his seat, the deprivation of these corrupted votes vacates his seat, however innocent he is. But, if the uncorrupted votes were adequate to his election, and he is purged from complicity in the fraud, corruption, or bribery, his seat is not exposed to any question of validity in the election.

Upon a reference to the testimony presented by the Ohio house of representatives, and sifted and emphasized by the select committee's majority and minority reports, we are able to ascertain the number of members of the general assembly of Ohio that have been brought into inculcation, the degree and weight of evidence affecting each of them, and the conclusions of these two committees as to what had been proved, or could be expected to be proved, as bearing upon each of these members.

As to four members, viz, Messrs. Baker, Hunt, Schultz, and Ziegler, being the members of the house of representatives of 1886 upon charges against whom the general investigations were set on foot, we find the committee, by the majority report, declare that "the testimony developed nothing of an inculcating character concerning the members of this house named in the resolution of inquiry." The minority report express their conclusions to the same effect, as follows:

That there has been absolutely nothing found in any way compromising the four members charged, and they are wholly exonerated from the charges made, and stand to-day without the shadow of a suspicion attaching to them in regard to conduct unbecoming members of this house.

As to two members of the house, viz, Mr. Kahle and Mr. Hull, the majority report names them as "two instances in which attempted bribery in the Senatorial canvass was reported by members of the sixty-sixth general assembly," and sets forth, as the report expresses it, "the testimony taken as to what those members reported" "in brief." Both Mr. Kahle and Mr. Hull were active and earnest supporters of Mr. Pendleton in the canvass, and so continued to the end, voting for Mr. Pendleton in the caucus and in the legislature. The evidence respecting these two members, as given or commented upon by the majority and minority reports, we refer to, conformably to our declared purpose, without attempting any observations of our own upon the testimony. For the immediate consideration now presented, it is sufficient to say, that no diversion from Mr. Pendleton's support to Mr. Payne's was effected as to these two electors.

The select committee names in the majority report two senators and two representatives, and speaks of them as follows :

Rumors as to suspected bribery with which were connected the names of Messrs. Mooney and Roche, members of the house, and Messrs. White and Ramey, members of the senate, of the sixty-sixth general assembly, all of whom voted in caucus for Henry B. Payne for United States Senator, were traced by the committee until developments, which were regarded as important, were reached, as follows—

Giving the testimony bearing upon each, as viewed by the majority of the committee. The minority report takes up the case of each of these members, and comments upon the evidence which it adduces from the testimony, and declares as to each of them that the testimony justifies no imputation upon any one of them. We again, without any observations of our own on the evidence, refer to the majority and minority reports on this topic.

It is proper that we should call the attention of the Senate to the very explicit and candid statement of the majority report, as to the reach and scope which were given to the investigation, and of the distinction drawn between the *testimony* at large and the *report* itself, as the latter containing "no facts" "which are not sustained by testimony upon which a legislative body might base further action." This report says :

Whenever our attention was called to anything which indicated the probable employment of improper means to gain support, we followed the clues presented, on the theory that we were not only authorized, but in duty bound, to pursue any matter that promised, even remotely, to show the use of such means in connection with the election, because the discovery of one important fact, although having no immediate bearing upon the charge against the persons named in the resolution, might lead to the discovery of facts having such bearing. And furthermore, and upon the same theory, our inquiries were not confined to the technical rules of legal proof, but the committee availed itself of any source of information—admitted hearsay statements, and even the opinions of witnesses. But we consider that in making this report no facts should be stated which are not sustained by testimony upon which a legislative body might base further action.

The minority report thus speaks of the completeness of the investigation instituted by the committee :

Your committee, in its anxiety that nothing, however trivial and remote, that might have, either directly or indirectly, any possible bearing on the matter under consideration, have exercised the greatest liberality possible in the taking of testimony, which has extended the scope of its inquiry far beyond the limits that could be given the most liberal construction of the resolution.

As the result of this wide investigation it does not appear that the select committee recommended any action by the legislature looking to a further investigation, or to the incrimination or punishment, in the courts of law of any persons named in the report, nor that the legislature itself has proposed any action in such directions, or either of them. Indeed, the whole recommendation of the committee to the House of Representatives is in these words :

That an authenticated copy of the testimony and report be transmitted to the President of the United States Senate for the information of the body of which Senator Payne is a member, and for such action as it may deem advisable.

In pursuance of this recommendation the house of representatives communicated to the Senate the testimony taken and the reports of the committee, which are before the Committee on Privileges and Elections. The only action taken by either house of the general assembly of Ohio since, that has been brought to the attention of the Senate or of its

committee, is shown in a resolution of the senate of Ohio, and one of the house of representatives, as follows :

*Senatorial election in Ohio.*

[Senate resolution—Mr. Hardacre—No. 58.]

Whereas by common report, suggested and corroborated by the public press of the State without respect to party, and by a recent investigation of the house of representatives, the title of Henry B. Payne to a seat in the United States Senate is vitiated by corrupt practices and the corrupt use of money in procuring his election; and

Whereas it is deemed expedient, in order to secure a thorough investigation of his said election as Senator by the United States Senate, that the belief of the general assembly in this regard be formulated in a specific charge: Therefore, be it

*Resolved*, That in the opinion of the general assembly, and it so charges, the election of Henry B. Payne as Senator of the United States from Ohio, in January, 1884, was procured and brought about by the corrupt use of money, paid to or for the benefit of divers and sundry members of the sixty-sixth General Assembly of Ohio, and by other corrupt means and practices, a more particular statement of which cannot now be given.

*Resolved*, That the Senate of the United States be, and the same is hereby, requested to make a full investigation into the facts of such election so far as pertains to corrupt means used in that behalf.

*Resolved*, That the governor be, and is hereby, requested to forward a copy thereof to the President of the Senate of the United States.

I hereby certify that the foregoing is a true and correct copy of said resolution, as the same appears upon the senate journal of Friday, May 14, 1886, after being changed from a "joint" to a "Senate" resolution, and adopted by the Senate.

C. N. VALLANDIGHAM,  
*Clerk Ohio Senate.*

[H. R. No. 89.—Mr. Brumback.]

Whereas it is the precedent in the United States Senate that charges of bribery must be directly made to warrant a committee of said body in proceeding to investigate the title of any United States Senator to his seat: Therefore,

*Be it resolved by the house of representatives of Ohio*, That in the investigation made under house resolution No. 28 ample testimony was adduced to warrant the belief that the charges heretofore made by the Democratic press of Ohio are true, to wit: That the seat of Henry B. Payne in the United States Senate was purchased by the corrupt use of money; and

*Further resolved*, That the honor of Ohio demands, and this house of representatives requests, that the said title of Henry B. Payne to a seat in the United States Senate be rigidly investigated by said Senate; and

*Further resolved*, That the governor of Ohio be requested to forward a copy of this resolution to the President of the United States Senate.

IN HOUSE OF REPRESENTATIVES.

Adopted May 18, 1886.

Attest:

DAVID LANNING,  
*Clerk.*

Upon the whole matter as presented, in evidence and argument, to the Committee on Privileges and Elections, we are of opinion that there is no evidence which purports to prove that fraud, corruption, or bribery was employed in the election of Mr. Payne affecting the votes, given either in the caucus or in the legislature, whereby the election was carried by corrupt votes to the effect of his election. Nor, in our opinion, is there any allegation that proof exists or would be forthcoming to the extent that would vitiate the election of Mr. Payne by reason of the necessary votes, in caucus or in the legislature, for his election, having been obtained by fraud, corruption, or bribery.

We are of opinion, therefore, that under the first clause of the fifth section of Article I of the Constitution the testimony and other considerations placed before the Senate do not warrant the Senate in institut-

ing by itself an investigation looking to the unseating of Mr. Payne as a member of the Senate.

We have, in our conclusions, made no distinction between the use of fraud, corruption, or bribery in a caucus vote or in the legislative vote, for a Senator. Although a caucus, or what proceeds in it, has no constitutional or legal relation to the election of a Senator, yet, by the habit of political parties, the stage of determination as to who is to be elected Senator, and the influences, proper or improper, that produce that determination, is that which precedes and is concluded in the caucus. So far as the question of personal delinquency or turpitude is concerned, no moral distinction should be taken between corrupt proceedings in caucus and those in the legislature. How far any such distinction would need to be insisted upon, in any case, on the question of unseating a Senator, where he himself was not affected with any personal misconduct or complicity with the misconduct of others, we have no occasion, in the immediate case or present attitude of the subject, to consider or suggest.

At the outset of our observations we stated the limits which properly should control the action of the Senate, under the applicable clauses of the Constitution, and by the same reason the ends which should be proposed in its investigations and to which they should be confined. It is obvious that the province and duty of a State, in its investigations of fraud, corruption, and bribery in an election of Senator, are much more extensive. A State is not confined at all to the question whether the actual election brought in question involves the Senator personally in misconduct, or whether enough votes for him were effected by fraud, corruption, or bribery that would require his seat to be vacated, although himself free from imputation.

The State should execute its laws respecting the purity of Senatorial elections, by the indictment and conviction of a single person who bribes or is bribed, whether the election is affected or not. The State should investigate as well to the end of better laws and surer execution of the laws. The State, too, is charged with the maintenance of "the honor of Ohio," and its vindication rests with its own legislation, its own judiciary, and its own people, but it cannot demand this vindication at the hands of the United States Senate, except as that may flow from investigations by that body within the limits of its Constitutional powers and duties.

That State has conducted and concluded its investigations into the election of Mr. Payne, and has placed the result before the Senate of the United States. It has attempted no further investigations either by the plenary power of its legislature, or through the functions of the courts of law. If, upon further examinations made by the State, through its legislature or its courts, a case should be presented for renewed consideration by the Senate, within the rules and principles we have stated as governing the action of the Senate, the further action of the Senate will be governed by what may then appear. As the whole matter now stands before the committee, we concur in its judgment that an investigation should not be instituted by the Senate, and the committee be discharged from the further consideration of the subject, and for the reasons which we have thus given.

H. M. TELLER.  
WM. M. EVARTS.  
JOHN A. LOGAN.