



JOHN MURRAY MITCHELL v. JAMES J. WALSH.

May 15, 1896.—Referred to the House Calendar and ordered to be printed.

Mr. LONG, from the Committee on Elections, No. 2, submitted the following

REPORT:

[To accompany H. Res. 339.]

The Committee on Elections, No. 2, having carefully considered the contested election case of John Murray Mitchell v. James J. Walsh, from the Eighth Congressional district of the State of New York, submits the following:

The contestant, John Murray Mitchell, was the Republican, and the contestee, James J. Walsh, was the Democratic candidate for Representative in Congress from the Eighth Congressional district of the State of New York at the election held November 6, 1894. The Eighth Congressional district is composed of certain election districts in the Second, Third, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth assembly districts. The official returns gave Mitchell 9,099 and Walsh 9,466, the official majority for Walsh being 367. Outside of the Second assembly district Mitchell had a majority of 1,328, while the majority for Walsh in the Second assembly district was 1,695. The evidence taken in this case was procured with great difficulty. The contestee placed many obstacles in the way of contestant procuring the evidence which he desired. Resort was had by both parties to the courts in order to compel the notaries to certify the evidence after it was taken, and contestee objects to the consideration of part of contestant's testimony, on the ground that William A. Hoar, the notary who took the testimony, was not in fact a notary.

IS THE EVIDENCE TAKEN BEFORE WILLIAM A. HOAR ADMISSIBLE?

The Revised Statutes of the United States, section 110, provides that the contestant may apply for a subpoena to any notary public—among others—who may reside in the Congressional district in which the contested election was held.

It is provided, in section 120, that all witnesses who attend the examination shall be examined under oath.

It appears that William A. Hoar was, in 1893, a resident of Kings County, N. Y., and, as a resident of that county, was appointed a notary public.

The statutes of New York provide that a notary public, appointed for the county of Kings—as well as for some other counties—upon filing a certified copy of his appointment, etc., in the clerk's office of New York County, may exercise all the functions of his office in that county,

as well as in the "county in which he resides and for which he was appointed." In compliance with this provision, Hoar filed a certified copy of his appointment in the clerk's office of New York County.

Prior to the taking of testimony in this case Hoar removed from Kings County and took up his residence in the Congressional district in which this contested election was held, which is in the city and county of New York.

The statute of New York, section 20, chapter 681, laws of 1892, provides, among other things, that an office shall be vacant when an incumbent, if he is a local officer, ceases to be an inhabitant of the political subdivision of which he is required to be a resident when chosen. The courts of New York have held that a notary public is an officer within the meaning of the statute.

The contestee made no claim as to any infirmity in Hoar as a notary public, or as to any want of validity in his acts as such, until after the taking of contestant's testimony in chief was completed.

The several notices to take testimony, served upon the contestee, described Hoar as a resident of the Eighth Congressional district of New York, while the transcripts of testimony, copies of which were, from time to time, served on the contestee, described Hoar as a "Notary public of Kings County, certificate filed in New York County."

When Hoar commenced taking testimony in rebuttal, objection was made on the ground that he was not a notary with power to administer oaths.

We are of opinion that the testimony taken before William A. Hoar ought to be considered by the committee and the House, for the reasons following:

1. Because it is too late for the contestee to be permitted to object on this ground. He knew, or, what is the same in legal effect, he was charged with knowledge of the fact as to whether Hoar was a notary authorized to administer oaths. He knew that the notary was described, in the notice, as residing in the Eighth Congressional district, and in his signatures to the transcript of testimony, as notary of Kings County, with certificate filed in New York County. To say the least, he was put upon inquiry.

The contestee is in the same position as if he and the contestant had agreed that the testimony might be taken before a person who was not, by any law, authorized to administer oaths. It is true that such an agreement might not be recognized by the House of Representatives. It might abrogate that, as it might any other agreement between parties. But it does not lie in the mouth of either party who has, either in fact or constructively, so agreed, to object to the validity of testimony so taken.

2. But we are constrained to put our conclusion on still broader grounds. The House of Representatives, with its broad and indeed limitless powers respecting the settlement of contested election cases, is only desirous of arriving at the truth, and may take such means as seem to it proper to reach the truth. While it will not depart from wise and well-settled rules of law, it will not hedge itself about with technical rules which do manifest wrong. In this case it is apparent that the parties to the contest, their attorneys, and every witness who was examined, supposed that Hoar was a notary public, with full power to administer oaths, and that a prosecution for perjury could as certainly be based upon a false statement before him as upon a false statement made on oath in a court of justice. We have therefore considered the evidence.

Thirty-four election districts of the Second Assembly district are in the Eighth Congressional district. They are nearly all attacked by contestant on the ground that gross frauds were perpetrated by contestee and his political adherents, through a general system of bribery, but it is only necessary to consider the evidence relating to five of the election districts, the Twenty-fifth, Thirtieth, Thirty-fifth, Thirty-sixth, and Forty-fourth, for the conclusions arrived at by the committee in reference to these districts are decisive of this contest, and it is not necessary to consider the evidence relating to other districts. Contestee has introduced no evidence tending to impair or change the vote returned for contestant in any particular.

AN ORGANIZATION TO BRIBE AND CORRUPT VOTERS EXISTED IN THE TWENTY-FIFTH, THIRTIETH, THIRTY-FIFTH, THIRTY-SIXTH, AND FORTY-FOURTH ELECTION DISTRICTS OF THE SECOND ASSEMBLY DISTRICT.

The vote as returned in these five districts is as follows:

Election district of Second Assembly district.	Walsh.	Mitchell.
Twenty-fifth.....	147	55
Thirtieth.....	172	72
Thirty-fifth.....	123	54
Thirty-sixth.....	105	35
Forty-fourth.....	182	70
Total.....	729	286

In these five election districts are found many of the lodging houses of the city. These houses charge from 10 to 25 cents a night for beds, and the lodgers are in the main transients who have no fixed abode.

It appears from the evidence that a well-organized system of bribery was carried on in these lodging houses by an organization known as Tammany Hall. This organization in its inception was a charitable institution, but it has for some years neglected its original purpose and design and has devoted itself exclusively to the management and control of politics in New York City and has interested itself in the success of the Democratic party and its candidates. The contestee is a vice-president of this organization. Its plan of operations was peculiar, and while it existed in all parts of the Eighth Congressional district and sought by every possible means to secure the election of contestee to Congress, yet the evidence of its operations in these five election districts is exceedingly plain and conclusive.

The Tammany organization, aside from its general officers, included a "leader" for each Assembly district and a captain for each election district. The Tammany "leader" of the Second Assembly district was Patrick Divver, not unknown to fame as Paddy Divver.

The Tammany captains in these five election districts were as follows: Twenty-fifth, Thomas Collins; thirtieth, James P. Divver; thirty-fifth, Dan O'Rourke; thirty-sixth, Mike Callahan; forty-fourth, Thomas Dineen.

The work of bribing the voters in each district was intrusted to a Tammany captain, who carried on his operations near the voting booth. His headquarters was a place for the alleged purpose of showing voters how to prepare their ballots. He had in his possession "Tammany pasters," which contained the names in print of the Democratic candi-

dates, from governor down, and which the voters could paste over the official ballots which were given them, and thus vote them as their ballots. It was permitted under the law.

The clerks and proprietors of the lodging houses were generally members of the Tammany organization. The registration from these lodging houses was very large, there being 837 persons registered from 20 lodging houses in the thirtieth, thirty-fifth, thirty-sixth, and forty-fourth election districts. The contestee received 582 votes in these four districts, and 558 voters gave as their places of residence these lodging houses. The clerks and managers of the lodging houses took an interest in the registration and gave material assistance in the corruption of the voters.

The Tammany captain in each election district had a number of assistants. In addition to his "inside" workers, who instructed the voter how to prepare his ballot, he had "outside" workers who brought the voter to headquarters. He there received his "paster" and was informed how to put it on, and was then taken to the polling booth. After the ballot was cast the voter was returned to the Tammany captain, who was informed that the man was "all right," and he was then paid the money. The amount, or price, in almost every instance was previously arranged and thoroughly understood. It varied from \$1 to \$2.

The Tammany Hall organization, being a secret society, had every facility for forming a conspiracy to carry elections by bribery, as its meetings were held in secret and its captains were secretly instructed.

John Sanford testified as to the manner in which the organization conducted the bribery in the twenty-fifth election district. (Rec., p. 208):

Q. On election day did you take any of the men up to any of the Tammany workers in that district?—A. Well, I took two or three men to one I supposed was a Tammany worker, gave them Tammany pasters; I didn't know the man.

Q. How many men did you take to this man?—A. I think three.

Q. Do you know the names?—A. One was named Frank Docherty, and another Antonio Biasco, an Italian; the other, I don't know his name; I don't know many of these people around there.

Q. What did this Tammany captain do after you took the men to him?—A. He gave them a paster and they went in and voted, and then he took them across the street after they came out, to the corner there.

Q. Did he say anything to them about whether they would receive anything for voting?—A. Not that I know of.

Q. Did they ask you?—A. They asked me if I knew what was into it; I think that was about all.

Q. What did you say?—A. I told them I heard there was a dollar; that was all I knew.

Q. Why did you take them up to this Tammany man?—A. Because they said they wanted to vote.

Q. And did you tell them you would take them where they could get something for voting?—A. Not such words as that; I couldn't say what I did say.

Q. Did you give them to understand—A. Yes, that was the understanding; they were to get a dollar, and some found fault that it was not enough.

Q. And you say this Tammany man gave the men pasters?—A. Yes, sir.

Q. And you saw them go into the voting place?—A. Oh, yes.

Q. And you saw them come out?—A. Yes.

Q. And did they go back to him?—A. Yes, and he took them across the street.

Q. Did you go back with them?—A. I went back with two of them.

Q. Did you see this Tammany man give them money?—A. No, sir; I didn't see that worker, but I saw another man told to give them money give them a silver dollar.

Q. You saw this man give them money?—A. Yes, sir.

Q. A silver dollar?—A. Yes, sir. One got \$2; I couldn't tell his name.

Q. Outside these three men that you say you took that way, did you see any other people get money?—A. Oh, I see people get money, but I couldn't say what for.

Q. Who was giving it to them?—A. The same man.

Q. The same man?—A. Yes, sir; in the corner store there.

Q. Did any man tell you outside of these men that they had received money for voting?—A. That is more than I can tell; I don't remember.

Q. How many do you think you saw outside of these three men that received money from that man or men around there?—A. Oh, I suppose fifteen or twenty; I don't know.

Q. Fifteen or twenty at the least?—A. Yes, sir; I suppose so.

The evidence of Patrick J. Lynch is found on page 106 of the record. The following extract from his evidence will show the proceedings in the thirtieth election district:

Q. How many men, as far as you know and remember, did you see that were paid by this same man that paid you on election day; how many were there that you saw receive money from that man?—A. I should judge about eighteen or twenty.

Q. How many?—A. Eighteen to twenty.

Q. Were they all from 173 Park row?—A. I could not swear they were all from there.

Q. A good many of them were?—A. The majority.

Q. You were around 173 Park row in the evening, were you not?—A. Yes, sir.

Q. Did you hear any of the men talking about having received money for voting?—A. Yes, sir; I did.

Q. Were any of those men the men which you had seen receive the money?—A. Yes, sir; several of them.

Q. How did the men seem to be—pretty well fixed as far as money went?—A. Some were dissatisfied and some were satisfied.

Q. What did they say?—A. Some said—they says, "Tammany be damned." In fact, they were all pretty full and kind of dissatisfied about not getting enough for their vote.

Q. Did any of the men say they got \$2?—A. Oh, yes, sir.

Q. And some of them got one?—A. Some got one and some got two.

Q. The men that got one kicked?—A. The ones that only got one kicked; those that got two began to brag about it, and then the others began to kick.

Q. You do not know the name of this man who gave you the money, you say?—A. No, sir; I couldn't tell.

Q. He was the Tammany captain there for that district?—A. He was supposed to be. He was pointed out to me as the Tammany captain.

Q. Who pointed him out to you as being the Tammany captain?—A. One of the leaders; in fact, two or three.

Q. He was the same man who got you to register and paid you 50 cents for registering?—A. The same man who paid me for registering.

Q. How much did they charge for lodgings?—A. From 15 to 25 cents.

Q. What do they have, rooms and beds?—A. Beds and rooms both.

Q. Did you see any difference in the number of people in that lodging house prior to October 1 and November 7?—A. It was more crowded election night than any night I have seen it.

Q. During October, prior to election, was there more people there than had been there in September; that is, strange faces you had not seen before?—A. Yes; it seems as though there was a little more strange faces there; yes, sir.

William L. Wilson testified in regard to the plan of operations in the thirty-fifth election district. His evidence will be found on page 152 of the record. We insert the following extract:

Q. Where did you live last November?—A. In the Bismarck, No. 9 Mulberry street.

Q. Did you vote from there?—A. Yes, sir.

Q. Do you know Dan O'Rourke?—A. Yes, sir.

Q. Is he the Tammany captain in that district?—A. Yes, sir.

Q. Did you see him around the polls on election day?—A. Yes, sir.

Q. Did you hear him promise any men money for voting?—A. Yes, sir.

Q. What did he say to the men?—A. Well, there were ten or eleven of us together, and I asked what was into it and he said two hundred.

Q. What did he mean by two hundred?—A. Two dollars.

Q. How many men were there around there with you?—A. Ten or eleven.

Q. And what did he say to those other men?—A. He says to me, "Where are you from?" I told him. He says, "I am not buying any votes out of the Bismarck."

Q. What did he say to the other men?—A. There was two hundred into it. Go ahead. Push it along.

Q. Was there anyone else with him?—A. Yes; another young fellow.

Q. Working with O'Rourke on election day?—A. Yes, sir.

Q. Did you see men hanging around O'Rourke on election day?—A. I went right away then. When he said he wasn't buying anybody out of the Bismarck I went away. I seen I couldn't get nothing.

Q. Did you say you saw about ten or eleven men who were standing around O'Rourke at that time whom he told there was two hundred, meaning \$2, for voting, and to go ahead?—A. Yes, sir.

Q. And this other man was assisting O'Rourke getting them up to the polling place?—A. Yes, sir.

John Reilly also testified in regard to the thirty-fifth election district, and his evidence is found on page 170 of the record. We make the following extract:

Q. Do you know Dan O'Rourke?—A. Yes, sir.

Q. Is he the Tammany captain of that district?—A. Yes, sir.

Q. Did you see him on election day?—A. Yes, sir.

Q. Did you see him during any registration days?—A. Didn't see him; saw another party.

Q. Do you know who that party was?—A. Yes, sir.

Q. State the name.—A. John Fennell.

Q. What did he say to you?—A. Said it was worth 50 cents every time my name went down.

Q. What do you mean, every time your name went down?—A. Registered, I suppose.

Q. Did he offer 50 cents?—A. Yes, sir.

Q. Did you register?—A. Yes, sir.

Q. What name?—A. Edward Ryan.

Q. Did you vote under that name?—A. Yes, sir.

Q. And your right name is John Reilly?—A. Yes, sir.

Q. On election day did you see Dan O'Rourke at all?—A. Yes, sir.

Q. Did he have any talk with you about voting?—A. He didn't have no talk; no, sir; he handed pasters around.

Q. Pastors?—A. Yes, sir.

Q. Did O'Rourke give you any pasters on election day?—A. Yes, sir.

Q. What pasters?—A. Tammany pasters.

Q. Were any other men with you at the same time?—A. There were three or four with me at the same time.

Q. And did he give the men pasters, too?—A. I saw him giving them something I supposed to be pasters.

Q. Were they along with you?—A. They were right behind me.

Q. Did he make any promises to you for voting?—A. Yes, sir.

Q. What did he say to you?—A. It wasn't a promise. He told me he would see me after I came out.

Q. Did he say anything further than that?—A. Not to the best of my knowledge.

Q. Did he tell you to vote that paster?—A. Oh, it was all right; yes. It would be all right.

Q. You went in and voted the Democratic paster?—A. Yes, sir.

Q. Did you see O'Rourke after he had voted?—A. Yes, sir.

Q. Did he give you anything?—A. Yes, sir.

Q. What did he give you?—A. One dollar.

Q. Did you see any other men around there on election day that received any money from O'Rourke?—A. Yes, sir.

Q. How many men did you see?—A. Well, there was about fifteen, I would think.

Q. Fifteen men?—A. Yes, sir.

Q. You saw O'Rourke giving them money?—A. Yes.

Q. Had you seen any of these men going into the voting place?—A. Yes, sir.

Q. Did you intend to register under your right name also?—A. I did; yes, sir.

Q. Why didn't you do so?—A. Because I heard too much talk about it and I didn't do it.

Dan O'Rourke, above referred to, was the Tammany captain for this district.

A number of witnesses testified in regard to the manner of work in the thirty-sixth election district. We refer to the testimony of Frank Hermin, found on page 193 of the record. The following is an extract from his testimony:

Q. Where do you live now, Mr. Hermin?—A. 13 Bowery.

Q. Where did you live last election?—A. 9 Chatham square.

Q. What house is that?—A. The Grand Windsor.

Q. That is a lodging house?—A. Yes, sir.

Q. How much do they charge a day there?—A. Fifteen cents a day—or a night, I should say.

Q. Did you register at the last election in this city?—A. Yes, sir.

Q. Did you vote?—A. Yes, sir.

Q. That is, last November?—A. Yes, sir.

Q. Did anybody request you to register?—A. Yes, sir.

Q. Who?—A. The night clerk of the hotel.

Q. Did he promise to give you anything for registering?—A. Yes, sir; \$3 for registering.

Q. And you registered under that promise of receiving \$3?—A. Yes, sir.

Q. Did he give you the \$3?—A. No, sir.

Q. Did you see that night clerk on election day?—A. Yes, sir; I seen him in the morning between 11 and 12 o'clock; I can not tell what time positively, because I was about half drunk when I met him. I didn't intend to vote at all, but he said go and vote and you are good for the money.

Q. Did he tell you the ticket to vote for?—A. The Democratic.

Q. Did he take you to see anybody on election day?—A. Yes; he brought me in, and I got \$2 from a man in Mike Callahan's, right inside in the back room, and he had a roll of bills there.

Q. What kind of a place is Mike Callahan's?—A. A respectable house.

Q. A saloon?—A. A saloon, yes; got a back room about as big as this one here.

Q. Did the night clerk pay you the money?—A. No, sir.

Q. Who paid it to you?—A. Oh, some assistant in Mike Callahan's, it must be.

Q. Did this night clerk turn you over to that man?—A. Yes; he said, "This man is all right." In fact, he said two of us were all right.

Q. Did that man give you any money?—A. Yes, sir.

Q. How much?—A. He gave me two \$1 bills.

Q. Did you say you voted on that day?—A. Yes, sir.

Q. What ticket did you vote?—A. The Democratic ticket.

Malcom McDonald also testified as to the thirty-sixth election district, and his evidence is found on page 201 of the record. The following is an extract from his evidence:

Q. You didn't vote at the last election?—A. Never did vote.

Q. Were you around the polling place in the thirty-sixth election district on election day?—A. I don't know where the thirty-sixth election district is.

Q. Do you know Mike Callahan?—A. Yes; well—

Q. Do you know him by sight?—A. Yes.

Q. Do you know him well?—A. I know him well by seeing him.

Q. Did you see him on election day at all?—A. Yes.

Q. Whereabouts?—A. Why, on the sidewalk and around his saloon.

Q. Did you see him around the voting place held at 7 and 8 Chatham square?—A. I didn't see him around the voting place, but not very far away from it.

Q. How far away?—A. Twice or three times the length of this room.

Q. That would be—A. About 30 or 40 feet.

Q. Did you see any other men around him there?—A. Yes; friends of his; I didn't know who they were, helpers or whatever they call them; heelers, or some such name as that, they call them.

Q. What were they doing?—A. They had a kind of box thing with pasters or ballots or something like that, and they were showing the people how to fold them, and showing them how to paste them on and fold them up and how to vote them, and like of that. Anybody could see it off the elevated station at Chatham square.

Q. Did you see Mike Callahan and these men that you call his heelers walking by and around the voting place there at 7 and 8 Chatham square?—A. Yes, sir; they walked past and walked back again.

Q. Did you see them speaking to any men going into this voting place there?—A. Not right beside the place I didn't see them talking to them, but they was talking to them in the saloon, and talking to them while they was going into this here place and getting pasters or whatever they call them.

Q. Did any men tell you on election day they had received any money for voting the Tammany ticket?

(Objected to as hearsay, incompetent, and irrelevant.)

A. On election day did they tell me? Yes, and lots of them.

Q. About how many?—A. Over a dozen.

Q. Did you drink with any of these men?—A. I did with two or three of them.

Q. Did they show you the money they had?—A. Why, I seen it when they paid for the drinks, when they put it on the bar to pay for the drinks.

Q. Did they say that was the money they received for voting?
(Objected to as hearsay, incompetent, and immaterial.)

A. Yes.

Q. Do those men which you speak of—these twelve men, about twelve men, you say, told you they were paid for voting—do they usually have plenty of money with them or are they a poor class of men?—A. They are poor workingmen. If they are doing any work, of course when they get paid they will have money.

Q. How much did you see these men have?—A. I have seen them—

Q. On election day?—A. On election day some of them had \$1 and some \$2, and they said it was for their votes they got it; and I knew two or three of them especially; I knew they had no money before they voted.

The Mike Callahan referred to in this extract is the Tammany captain of the thirty-sixth election district.

The evidence in regard to the forty-fourth election district is full and complete, but we refer only to the testimony of Abraham Nathan (Rec., p. 99), of which the following is an extract:

Q. When you came out, whom did you see after you voted?—A. Tom Dineen.

Q. And did Tom Dineen say anything to you?—A. The clerk sent me to him and he knew me. Tom Dineen knows me.

Q. Did he give you any money?—A. He went around the corner and gave me a dollar.

Q. Did you see any other men on that day that were paid for voting?—A. Yes.

Q. About how many?—A. Well, I can not tell exactly how many it was; maybe thirty or forty. I was standing there for an hour watching that game.

Q. Do you know who brought the men out of 88 that day to vote?—A. Yes, sir; that was the watchman.

Q. The night watchman?—A. Yes, sir.

Q. How did he bring the men out from that house?—A. By waking them up; make them go down.

Q. One at a time, or three or four together?—A. Sometimes one, sometimes more.

Q. Who did he take them to?—A. Took them around there to the polls and see the clerk.

Q. And this clerk would give them a paster?—A. Yes.

Q. And they would go in and vote?—A. Go in and vote.

Q. And after they came out they would see this clerk?—A. Yes.

Q. And then see Dineen?—A. Yes, sir.

Q. And then receive the money?—A. Yes, sir.

Q. You say you have lived in that lodging house about two years?—A. Yes, sir.

Q. Were there as many people in that house before the 1st of October as there were during the month of October up to election day?—A. Well, I couldn't tell exactly that.

Q. Did there seem to be more strange faces?—A. I heard some men before election were there only for the purpose for to vote, and after that they go their own way.

Q. Did you see more strange faces during October?—A. Yes, sir; about ten or twelve.

Q. Were those faces around on election day or a few days after?—A. No, sir.

Q. They disappeared?—A. Yes, sir. There may be more. That's all I remember.

Q. You were around there after the polls had closed in the afternoon after the men had voted?—A. No.

Q. Do you know of any other men in these other lodging houses in this district—there seemed to be five or seven of them—72, 88, 90, 92, 96, 100, 108, 112? Do you know any men in any of those lodging houses who were paid for voting on election day?—A. I know one in 72.

Q. Isn't it the general custom in those lodging houses?—A. They all get paid.

Q. They all get paid for voting?—A. Yes, sir. Everybody knows that around there.

Henry S. Parmlee (Rec., p. 113):

Q. Where did you live at the last election?—A. 100 Bowery.

Q. How long had you lived there?—A. I have lived there for twelve years, off and on; eight months in the year, and I go down to Coney Island about four months every summer.

Q. You voted as a lodger in that house, 100 Bowery, on the last election?—A. Yes, sir.

Q. Prior to the last election day did anyone approach you and ask you to work for him in securing voters on election day?—A. Yes, sir.

Q. What was that man's name?—A. Thomas Dineen. I worked for him for the last five years.

Q. Are you paid anything for that work? Were you paid for this election?—A. I always had \$5 before, except the last time I got only \$3.

Q. Did he agree to give you \$5?—A. Yes, sir.

(Counsel for contestee object to the witness now under examination being further examined, as his name and address are not given in the notice served upon them.)

Q. Did you see Dineen the night before election?—A. Yes, sir.

Q. Did you have any conversations with him?—A. Told me to be on hand at 5 in the morning.

Q. Were you on hand at 5 in the morning?—A. Yes.

Q. What did you do? Did he give you any pasters?—A. Yes.

Q. What instruction did he give you?—A. Try to get all the men I could to vote.

Q. And did he tell you how much you could offer the men?—A. Not at that time; no, sir.

Q. You got there at 5 o'clock in the morning?—A. Yes.

Q. Did you see Dineen at 5 o'clock in the morning?—A. Yes.

Q. About what time?—A. I guess about half past 5; I am not quite sure.

Q. Did you have a conversation then about getting the men out?—A. He told me to go down to the house at that time and wait for about an hour for the men.

Q. Did he tell you—give you a list of the men for that house?—A. Yes.

Q. The men to get out to vote?—A. Yes, sir.

Q. Did you get any men out on election day?—A. Yes, sir.

Q. To vote?—A. Yes, sir.

Q. About what time was it you got the first one?—A. About 9 o'clock.

Q. Had you seen Dineen from half past 5 to 9 o'clock on election morning?—A. Yes, sir.

Q. What did you say to him and what did he say to you?—A. He told me to get the men all out I could. I told him they didn't get up early at that house; and I was trying to get men from the other houses along there as well.

Q. Did he say anything about what price you should offer the men for voting?—A. Not until after 9 o'clock, he didn't.

Q. What did he say to you then?—A. At that time I understood that the Republican captain had cleared out, and when he found that out he told me he wouldn't pay but a dollar.

Q. A dollar a vote?—A. Yes, sir.

Q. How did you get these men?—A. I went to the different men and talked with them and tried to get them to vote.

Q. Did you give them a paster?—A. Yes, sir.

Q. What did you say?—A. I told them they might as well vote this ticket.

Q. What ticket was it?—A. Democratic ticket.

Q. You gave them one of those pasters from the governor down to alderman?—A. Yes, sir.

Q. Democratic pasters?—A. Yes, sir.

Q. What did the men ask you—anything about what they were to receive?—A. Yes, sir. I told them that as soon as they voted to hunt me up and I would take them to Dineen and he would see that it was all right.

Q. How many men do you think you got in that way to which you gave pasters and made this statement to them that you have just testified to?—A. Well, over thirty.

Peter J. Grant (Rec., p. 122):

Q. Mr. Grant, do you know Thomas Dineen?—A. Yes, sir.

Q. Wasn't he commonly called Tommy Dineen?—A. Tommy, he is generally called.

Q. Is he the Tammany Hall captain of that election district?—A. Supposed to be. He acts as such.

Q. Were you working for him on the last election day?—A. Yes, sir.

Q. November 6, 1894?—A. Yes, sir.

Q. Whereabouts were you working with him?—A. In the forenoon I was working on the streets, and in the afternoon I was working in the hallway of No. 112 Bowery.

Q. What kind of a place did you have down there, 112?—A. A hallway; entrance to another lodging house.

Q. What were you doing down there?—A. I was instructing the voters how to fold the ballots.

Q. Was Tom Dineen around there?—A. Yes, sir; all the time, backward and forward.

Q. Do you know Mr. Parmelee?—A. Yes, sir; I do.

Q. Do you remember his bringing any man up there to Tom Dineen on election day?—A. Yes, sir.

- Q. And saying to Tommy Dineen that these men are all right?—A. Yes, sir.
- Q. What did Dineen do with these men after Parmelee left them?—A. He generally turned around at the foot of the stairs and gave them money.
- Q. You saw him give them money?—A. Yes, sir.
- Q. How many men do you suppose you saw Tom Dineen pay on election day?—A. I would calculate over fifty.
- Q. Over fifty?—A. At least.
- Q. Do you know how much he would give them?—A. In some cases \$1, in other cases \$2. I actually seen the money he gave them.
- Q. Have you lived among the lodging houses much, Mr. Grant?—A. Yes; for the last twelve or thirteen years.
- Q. Have you ever worked for Dineen before on election day?—A. I wasn't employed by him.
- Q. But you used to help him?—A. I used to help him.
- Q. Did he pay you anything for working for him?—A. No, sir; not previous years; he never paid me anything.
- Q. Did Parmley give you any money on election night there?—A. He gave me \$3.

The Thomas Dineen referred to is the Tammany captain of the forty-fourth election district.

As will be observed, the above witnesses were nearly all persons who had voted the Democratic ticket. It is shown that the system and method by which the bribery was carried on in the interest of the Democratic ticket and the contestee was the same in each district, of the same general character and exhibited by the same methods, and was controlled by the Tammany captains and their assistants in each district.

Contestee attempted to discredit the testimony of the above witnesses by showing that they had been entertained by contestant and his attorneys, and for this reason were unworthy of belief.

They were not impeached in any instance, and we believe that, taking into consideration the surrounding circumstances, they are entitled to credence.

Fraud can rarely, if ever, be proven by direct evidence, and the rule is that whenever a sufficient number of independent circumstances which point to its existence are clearly established a prima facie case of its existence is made, and if this case is not met with explanation or contradiction it becomes conclusive.

In Paine on Elections (sec. 491) the following rule is announced:

When evidence of bribery by an active supporter of the respondent is shown, the court will draw unfavorable conclusions from the neglect or refusal of the person so charged to explain his conduct in the witness box.

Contestee did not introduce any evidence to disprove the charges of bribery. Not a Tammany captain, on whom the bribery was fastened by the testimony, was put upon the stand to contradict the statements made by the witnesses, nor to assert his innocence, nor to disprove what the testimony so clearly proves, namely, the existence of a conspiracy to procure votes by bribery.

As the witness Abraham Nathan states in his testimony, it appears to be the general custom in the lodging houses to bribe the voters. They all get paid for voting and all seem to expect it, and all vote as Tammany Hall directs.

Under the evidence in this case, and the failure of the contestee to explain or contradict the charges of bribery, we are forced to the conclusion that an organized conspiracy existed in these five election districts for the purpose of corrupting voters by general and wholesale bribery.

It is impossible to determine the number of bribed votes or the names of the voters. These five election districts were thoroughly saturated with fraud and corruption.

The case of *Platt v. Goode* (4 Congressional Election Cases, 679) furnishes the only rule that can safely be followed in this case. In that case, where it was shown that 500 voters who had been bribed voted in three precincts which polled in the aggregate 1,619 votes, the whole returns of those precincts were rejected upon the ground that when the record showed that illegal votes had been cast and furnished no method for their elimination, the vote of the entire precinct should be rejected.

Contestant insists that only the vote of the contestee in these five districts should be rejected, for the reason that there is no evidence of bribery in the interest of contestant. This is true. It is not necessary in the decision of this case to determine which rule should be adopted, and we do not decide which is correct. The result is the same whichever is followed.

If the vote of contestee only in these five districts is rejected, contestant will be elected by 362. If the entire vote in these five districts is rejected, contestant will be elected by 76.

Contestee insists that he should only lose those votes where individual instances of bribery is proven. We can not accept this theory of the law when the evidence shows the existence of a conspiracy to corrupt voters by bribery.

The case of *Noyes v. Rockwell* (Congressional Election Cases, Fifty-third Congress, p. 23) clearly establishes the doctrine that where a conspiracy to corrupt voters by bribery is shown to exist, and it is established that one voter of a class was bribed, that the votes of all persons belonging to the class who cast similar ballots should be rejected.

In this case the existence of the conspiracy is clearly shown in these five election districts, and as it is impossible to determine the number of votes affected, and also impossible to eliminate the bribed votes from the legal, we have reached the conclusion that the vote from these five districts should be eliminated from the count.

Contestant introduced a great deal of evidence tending to prove that the election officers had been guilty of gross negligence in the counting of the votes and the making out of the returns. We believe that the evidence clearly establishes that the returns from the thirty-sixth and forty-fourth districts are inaccurate and uncertain and should be rejected, even though there had been no organization to bribe in these two districts; but, as these districts should be rejected for the reason above stated, we do not deem it necessary to go into the evidence relating to the conduct of the election officers, although the proceedings of these officers, as well as those in the fifteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-sixth, twenty-eighth, forty-third, forty-fifth, and forty-eighth election districts of the Second Assembly district, do not meet with our indorsement.

We submit the following resolutions:

Resolved, That James J. Walsh was not elected a Representative to the Fifty-fourth Congress from the Eighth Congressional district of New York and is not entitled to his seat.

Resolved, That John Murray Mitchell was elected a Representative to the Fifty-fourth Congress from the Eighth Congressional district of New York and is entitled to his seat.