tion with reference to hours of the 24, then the ordinance cannot limit the time to a shorter period of hours. For instance, if the business is authorized under the state law to run the entire 24 hours, an ordinance which authorizes the business to be carried on for fewer hours or restricts or inhibits it to less time than 24 hours would be invalid. Arroyo v. State, 69 S. W. 503; Fay v. State, 44 Tex. Cr. R. 381, 71 S. W. 603, and authorities already cited. In the Arroyo Case, supra, the city of Dallas passed an ordinance authorizing the opening of saloons on Sunday for the purpose of selling liquor until 9 o'clock in the morning, and after 4 o'clock in the evening. As the state law prohibited the selling of liquor for the 24 hours, this ordinance was held invalid, yet the city charter undertook to confer authority upon the city to pass such an ordinance. The Fay Case arose in Galveston involving the same question. The ordinance undertook to confer authority upon the owners of saloons to sell intoxicants on Sunday until 9 o'clock in the morning, and required them to close until 4 o'clock in the evening, after which time they could carry on their business. The ordinance was held invalid, in that it was contrary to the statutes of the state, which required the closing of the saloons for the entire 24 hours. Under the state law, pool halls and billiard tables may run or keep open during the 24 hours, there being no limit placed by the state statute upon the hours of opening and carrying on the business. The Memphis town ordinance undertook to limit the opening of these pool halls to 9 o'clock in the evening. This is in direct conflict with the state law, and under the authorities cited must be held invalid.

The judgment is reversed, and relator is ordered discharged from custody.

PRENDERGAST, J., absent.

Ex parte WOLTERS.

Ex parte GRAY.

(Court of Criminal Appeals of Texas. Dec. 6, 1911. On Motion for Rehearing, Feb. 28, 1912.)

1. STATES (§ 32*) — LEGISLATURE — SPECIAL SESSION — POWERS — PETITION FOR SUBMISSION OF ADDITIONAL SUBJECTS—GOVERNOR'S REPLY.

In response to a petition from the Legislature at a special session for the submission of certain matters other than those embraced in the call, the Governor responded that when the appropriation bill was passed he would "consider the advisability" of submitting additional questions for the consideration of the Legislature. *Held*, that the reply was merely a courteous refusal to accede to the request, especially when taken in connection with a failure to submit the matters requested. Per Davidson, P. J., Harper and Prendergast, JJ., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 32.*]

2. STATES (§ 40*) — LEGISLATURE — SPECIAL SESSION — POWERS — SUBJECT-MATTER — INVESTIGATIONS.

Under Const. art. 3, § 40, providing that at a special session of the Legislature there shall be no legislation on subjects other than those stated in the Governor's proclamation or presented by him to them, the Legislature at such session may not investigate matters as to which it could not legislate or take any action; so that where a committee was appointed by one house of the Legislature at a special session to investigate a matter not mentioned in the call or otherwise submitted by the Governor, the appointment of the committee was not authorized, and it was without power to call witnesses, and hence a witness' refusal to answer questions was not an obstruction of the proceedings of the house, which the house could punish as a contempt. Per Davidson, P. J., Harper and Prendergast, JJ., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

3. STATES (§ 40*) — LEGISLATURE — SPECIAL SESSION—POWERS — INVESTIGATION — CONTEMPT.

Const. art. 3, § 15, providing that the Legislature may "punish, by imprisonment during its session, any person, not a member, * * * for obstructing any of its proceedings," places a limitation on the power to punish for contempt; and hence, where the Legislature at special session appointed a committee to investigate a matter not submitted to them, and undertook to punish a witness for contempt in refusing to answer questions before the committee, the entire proceeding being beyond the legislative power, as referring to a matter as to which there could be no legislation, the Legislature was without jurisdiction either of the subject-matter or of the person of the witness, and powerless to pronounce judgment punishing the witness for contempt. Per Davidson, P. J., Harper and Prendergast, JJ., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

4. STATES (§ 40*) — LEGISLATURE — INVESTIGATING COMMITTEE—SCOPE—QUESTIONS TO WITNESS—CONTEMPT.

Where the Legislature appointed a committee with authority to investigate whether, at a recent election on the issue of state prohibition of intoxicating liquors, poll taxes had been illegally secured, or receipts or exemption certificates illegally issued, and to whom, and who furnished the money therefor, and to inquire into all violations and evasions of the election laws of the state, and the manner and method thereof, and by whom made or instigated, the refusal of a witness before such committee to disclose who contributed to the campaign fund of the anti-prohibition side, the amount of the fund, and its disposition, was not a contempt; the questions not suggesting any violation of law. Per Davidson, P. J., Harper and Prendergast, JJ., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

5. STATES (§ 39½*)—LEGISLATIVE POWERS—SPECIAL SESSION—MATTERS SUBMITTED BY GOVERNOR.

A message to the Legislature in special session from the Governor, asking an increase over the usual appropriation for the offering of rewards and the enforcement of the law, was insufficient as a submission to the Legislature of the subject of irregularities and viola-

tions of law at a recent election, so as to authorize the Legislature to investigate such subject, though the Governor in the message mentions his offer of rewards for the arrest and conviction of offenders at such election, and includes his proclamation making the offer as a part of the message. Per Davidson, P. J.; Prendergast, J., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 39½.*]

6. States (§ 34*) — Legislature — Special Session — Powers — Petition for Submission of Further Subjects—Governor's Reply.

In response to a petition from the Legislature at a special session for the submission of certain matters other than those embraced in the call, the Governor replied that when the appropriation bill was passed he would "consider the advisability" of submitting additional questions for the consideration of the Legislature. *Held*, that the reply was not a refusal to submit further matters, but was a promise to consider whether to do so, so that the Legislature, by a committee, could seek information to impress on him the necessity for a submission of such matters. Per Harper, J.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see States, Cent. Dig. § 42; Dec. Dig. § 34.*]

7. States (§ 34*) — Legislature — Special Session — Powers—Constitutional Limitations—"Legislation."

The Legislature at a special session has all the power it has at a regular session, except so far as restrained by the Constitution, and the limitation by article 3, § 40, providing that at such sessions there shall be no "legislation" on subjects not designated by the Governor, does not preclude the appointment of an investigating committee to obtain information for future use, even on a subject not submitted by the Governor; the word "legislation" having a well-defined meaning, and including only the enactment, repeal, and amendment of laws. Per Harper and Prendergast, JJ.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see States, Cent. Dig. § 42; Dec. Dig. § 34.*

For other definitions, see Words and Phrases, vol. 5, p. 4086.]

8. States (§ 34*)—Legislature—Investigations — Scope — Questions to Witness — Propriety.

Questions by a legislative committee, investigating the conduct of a recent election, calling on a witness to disclose the character of expenditures made by him in a general way, and the amount spent in preparing, mailing, and distributing campaign matter, were calls for information on subjects which were subject to legislative control, and were proper; but questions as to who contributed to the campaign fund, or the amount of such contributions, were improper. Per Harper, J.

[Ed. Note.—For other cases, see States, Dec. Dig. § 34.*]

9. States (§ 32*) — Legislature — Special Session—Powers—Petition for Submission of Further Subjects—Governor's Reply.

In response to a petition from the Legislature at a special session for the submission of matters, not embraced in the call, relating to amending the election laws, so as to prevent illegal payment of poll taxes, and to prevent, detect, and punish election frauds, limiting the number of saloons, and otherwise regulating the liquor traffic, the Governor replied that when the appropriation bill was passed he would "consider the advisability" of submitting additional matters for the consideration of the Legislature. *Held*, that the reply was not a refusal of the request, but, taken in connection with another message from the Governor requesting an increase over the usual appropriation for enforcing the laws, and calling attention to the charges of frauds and irregularities of a recent election on the issue of state prohibition of intoxicating liquors, and to the fact that he had offered a reward for the arrest and conviction of offenders against the election laws, was an implied indication, if not a promise, that he would submit the requested matters. Per Prendergast, J.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 32.*]

10. States (§ 34*) — Legislature — Special Session—Powers—Investigations.

The House of Representatives being an independent branch of the Legislature, and as such having not only all the powers expressly and by necessary implication granted by the Constitution, but also all the inherent powers not expressly or impliedly denied, was entitled to appoint a committee, at a special session, to investigate a recent election on the issue of state prohibition of intoxicating liquors, and determine whether there were any irregularities connected with the payment of poll taxes, or the issue of receipts or certificates of exemption, whether there were any violations or evasions of the election laws, and by whom and how, whether there was any corrupt use of money, and how much and by whom money was contributed, whether there was any conspiracy to corrupt the ballot box, etc. Per Prendergast, J.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 34.*]

11. States (§ 34*)—Legislature—Powers—Investigation — Contempt — Refusal to Answer.

Questions asked of a witness before a committee appointed by the House of Representatives to investigate the conduct of a recent election, relating to the campaign fund of one of the parties, its sources, amount, and disbursement, *held* all pertinent and material to the subject. Prendergast, J.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 34.*]

12. States (§ 40*)—Legislature—Powers—Contempt—Punishment.

Where a branch of the Legislature properly appointed an investigating committee of its members, and the committee summoned a witness, who refused to answer pertinent questions, which refusal was reported to the house, where the questions were determined to be proper, and his refusal to answer them an obstruction of the proceedings of the house, whereupon a judgment nisi was entered against him for contempt, and he was summoned before the bar of the house to show cause why he should not be punished, where he persisted in refusing to answer, and the house by full resolutions determined that he was guilty of obstructing its proceedings and ordered him punished for contempt, all of which appeared on the journal of the house, the courts cannot prevent the enforcement of the sentence, on the ground that he was not obstructing the proceedings of the house, but only of the committee; the house, and not the courts, being entitled to determine its procedure. Per Prendergast, J.; Harper J., dissenting.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

13. States (§ 39½*)—Legislature—Powers of Separate Houses—Appointment of Investigating Committee.

A single branch of the Legislature has the power to appoint a committee to gather information and report recommendations as to the enactment of laws. Per Harper and Prendergast, JJ.

[Ed. Note.—For other cases, see States, Cent. Dig. § 45; Dec. Dig. § 39½.*]

14. States (§ 34*)—Legislature—Investigating Committee—Scope of Powers.

The powers of an investigating committee, appointed by one house of the Legislature, to ask questions and gather information, are as broad as the language of the resolution appointing the committee, except that the committee is confined to matters as to which the Legislature can act by prohibition or regulation, or as to which it could inquire to enable it to properly perform its duty as to matters on which it would be authorized to act. Per Harper, J.

[Ed. Note.—For other cases, see States, Dec. Dig. § 34.*]

15. Constitutional Law (§ 70*)—Judicial Functions—Encroachment on Legislature.

So long as the Legislature acts within its powers, its good or bad faith in so doing is a matter of which the courts can take no cognizance; motives and purposes being immaterial, if they have the legal right to act. Per Harper and Prendergast, JJ.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 129–132; Dec. Dig. § 70.*]

16. States (§ 40*)—Legislature—Power to Punish for Contempt.

Under the constitutional division of the government into departments, and the provision "that no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others," except as expressly permitted, the power to punish for contempt, being a judicial power, requiring ascertainment of a fact and the adjudgment of punishment, is not inherent in the Legislature, but is limited to such cases as are expressly provided for by the Constitution. Per Harper, J.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

17. States (§ 40*)—Legislature—Power to Punish for Contempt.

Under Const. art. 3, § 15, authorizing the Legislature to "punish, by imprisonment during its session, any person, not a member, for obstructing any of its proceedings," a refusal by a witness to answer questions propounded by an investigating committee cannot be punished as a contempt; the proceedings of the committee not being proceedings of the house which appointed it. Per Harper, J.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

On Motion for Rehearing.

18. Contempt (§ 3*)—"Criminal Contempt."

A "criminal contempt" means acts committed against the majesty of the law, the primary purpose of their punishment being the vindication of public authority; acts of disrespect to the court or its process; cases in which the state alone is interested in the enforcement of the order. Per Davidson, P. J., and Harper, J.

[Ed. Note.—For other cases, see Contempt, Cent. Dig. § 4; Dec. Dig. § 3.*

For other definitions, see Words and Phrases, vol. 2, pp. 1747, 1748.]

19. Contempt (§ 4*)—"Civil Contempt."

A "civil contempt" is the failure to do something required by order of the court, for the benefit or advantage of a party to the proceeding. Per Harper, J.

[Ed. Note.—For other cases, see Contempt, Cent. Dig. § 4; Dec. Dig. § 4.*

For other definitions, see Words and Phrases, vol. 2, p. 1194.]

20. States (§ 40*)—Refusal of Witness to Answer Before Legislative Committee.

The refusal of a witness, before an investigating committee of the Legislature, to answer proper questions, is a criminal contempt. Per Davidson, P. J., and Harper, J.

[Ed. Note.—For other cases, see States, Dec. Dig. § 40.*]

21. Habeas Corpus (§ 90*)—Rehearing—Right of State—"Criminal Case."

Under Pen. Code 1911, art. 3, providing that no person shall be punished for any act or omission, unless the same is made a penal offense and a penalty affixed thereto by the written law, and the further provision of the Code that no person shall be prosecuted for a criminal offense, except by indictment in case of felony, by information in case of misdemeanor, or by complaint in justice's court; and in the absence of any statute making a criminal contempt an offense, a proceeding by habeas corpus to review an order committing relator to prison for such a contempt is not a "criminal case," so as to preclude a rehearing on motion of the state, within the rules prohibiting the state to have a new trial or an appeal in criminal cases. Per Harper and Prendergast, JJ.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see Habeas Corpus, Dec. Dig. § 90.*

For other definitions, see Words and Phrases, vol. 2, pp. 1743–1745.]

22. Habeas Corpus (§ 90*)—Rehearing—Right of State.

Even if a proceeding by habeas corpus in the Court of Criminal Appeals to obtain relator's discharge from confinement under an order of a house of the Legislature holding him guilty of contempt were a criminal case, that court would not be debarred from granting a rehearing after deciding there was no contempt and discharging relator; the court being merely a reviewing tribunal, and in no sense trying the case. Per Harper and Prendergast, JJ.; Davidson, P. J., dissenting.

[Ed. Note.—For other cases, see Habeas Corpus, Dec. Dig. § 90.*]

Petitions by J. F. Wolters and W. H. Gray for habeas corpus to obtain discharge from imprisonment under orders of the House of Representatives and the Senate, respectively, holding them in contempt for refusal to answer questions asked them by investigating committees. Relators discharged.

A full statement of the facts relating to the Wolters Case will be found in the dissenting opinion by Judge PRENDERGAST, and in the Gray Case in the opinion by Judge HARPER; the essential facts being similar in the two cases.

Jonathan Lane, R. H. Ward, W. A. Hanger, J. L. Storey, H. M. Garwood, Nelson Phillips, R. S. Neblett, J. B. Stubbs, and William Thompson, for relators. D. W. Odell, Cullen F. Thomas, Luther Nickels, C. M. Cureton, and C. E. Lane, Asst. Atty. Gen., for the State.

Ex parte Wolters.

DAVIDSON, P. J. The applicant was adjudged guilty of contempt of the House of Representatives, at the recent called session of the Legislature, for refusing to answer questions propounded by a committee appointed by that body to inquire into sundry and divers things supposed to have occurred in connection with the prohibition election held on July 22, 1911. If this election had resulted favorably to prohibition, the proposed amendment would have supplanted the present system of local option and placed in effect state-wide prohibition. The result, however, was antagonistic to prohibition, and the amendment was lost by a majority of about 6,000 votes.

On June 20, 1911, his excellency, Governor Colquitt, issued a proclamation calling a special session of the 32d Legislature, to convene on Monday, July 31, 1911, in which proclamation he indicated the purposes to be: (1) To make appropriations for the support of the state government and for the public service for the fiscal years beginning September 1, 1911, and September 1, 1912. (2) To apportion the state into senatorial districts and into representative districts, and to fix the basis of representation therefor. (3) To consider and act upon such other matters as may be presented by the Governor, pursuant to section 40 of article 3 of the Constitution of Texas.

The Legislature met, and, in pursuance to said call, began its work on July 31, 1911. About August 1st, realizing the fact that authority had not been mentioned in the proclamation of the Governor for the purposes for which concurrent resolution No. 1 was introduced in the Senate, 17 members of the Senate, who were all favorable to state-wide prohibition, presented said resolution to the Governor. The first section of that resolution related to the amendment of the election laws, so as to further provide against illegal payment of poll taxes, and to enact such other laws as were deemed by the committee necessary to safeguard the ballot box, and to secure elections without taint of irregularity, fraud, or other corrupt practices. The second section of the resolution related to the prohibition of brewery owners, stockholders therein, saloons, saloon owners, and all others connected directly or indirectly with the liquor traffic, from contributing to campaign funds to influence elections, and also prohibiting persons from receiving, using, or disbursing funds so contributed by those engaged in the liquor traffic. The remaining sections of the resolution referred to legislation in regard to the sale of liquor in some form or another. The Governor refused to respond to this request, and declined to submit the matters therein mentioned for the action of the Legislature. Concurrent resolution No. 1 was abandoned by the Legislature. To meet this refusal of the Governor, each branch of the Legislature acted independently in the appointment of committees.

On the 3d of August a resolution, not concurrent, was introduced in the House of Representatives by friends of state-wide prohibition, providing for the creation of a committee to investigate supposed irregularities occurring at the election held on July 22, 1911. This committee, by the terms of the resolution, was empowered to investigate whether or not there had been poll taxes illegally secured, or receipts or exemption certificates, etc., issued, and, if paid for or issued, by whom paid for and by whom issued, and to whom issued, and who furnished the money for such purposes. It was also empowered to inquire into all violations and evasions of the election laws of the state, and the manner and method of such evasions, and by whom made or instigated. These matters all related to the election held on July 22d in regard to the prohibition amendment. There were other matters mentioned in the resolution to be submitted to said committee unnecessary to enumerate.

The committee was promptly created and given all the power possible to be conferred by the House of Representatives to carry out the purposes of the resolution. This included the issuance of process, its execution and enforcement, and providing for the expenses incurred by the members of the committee. It may be also mentioned as a matter of some materiality that the friends of the amendment recently defeated met at Ft. Worth and passed a number of resolutions condemnatory of those who opposed the prohibition amendment, in which many derelictions were charged, intimating corrupt practices, and calling upon the Legislature to cause an investigation to be made in regard to these charges. This occurred two days before the Legislature was to meet at Austin. The convention at Ft. Worth adjourned to meet at Austin simultaneously with the convening of the Legislature. On the day the Legislature did convene at Austin, those gentlemen, or a large part of them, met in the city of Austin and held a meeting. Quite a number of the members of the Legislature attended that meeting, that body having adjourned for that purpose, at which meeting practically the same resolutions were indorsed that had been indorsed at the Ft. Worth meeting. It is also stated that it was understood or agreed in that meeting that the Legislature should carry out the will and wishes expressed at said meeting. The above is shown by the record in this case. The creation of the committee and its work occurred after the Governor had declined to submit the matters requested in the concurrent resolution No. 1.

[1] The consideration "of the advisability of submitting additional questions for the consideration of the Legislature" was but a courteous refusal to comply with request con-

tained in concurrent resolution No. 1 on the part of the Governor. The Legislature so understood and acted. The committee, after its appointment, met and began work. Among other witnesses summoned before it was this applicant, who was chairman of the anti state-wide executive committee, and, as its head, managed the campaign against state-wide prohibition. Many questions were asked of and answered by him. Other questions were asked, which he declined to answer. These cover several pages of the committee's report. It is deemed unnecessary here to set out all these matters. They can be summarized with this statement: He declined to answer questions seeking to elicit information as to who contributed to the campaign fund of the anti state-wide side of the issue, and the amount received, from whom received, as well as to whom he paid out the money contributed. Names were suggested in the questions to him, but to all these he firmly declined to give an answer. We may sum up, in a general way, that he did state the money received by him or paid to him for such purpose was not used in violation of any of the laws of the state, or so as to infringe any idea of good morals, or in any illegitimate manner. There are many matters of evidence brought out in the record which brought in review the conduct of the political campaign and incidents thereto pertaining. These are not mentioned, because not thought to be necessary to a decision of this case.

[2] Several questions are presented for discussion. It is not the purpose of this opinion to review all these questions. The first one to be discussed is: Did the House of Representatives have authority to appoint the committee it did appoint? Second. If so, did that committee have authority to demand of applicant answers to the questions propounded to him, and were the questions and answers material to the matter under investigation? Both propositions should be answered in the negative. Be it remembered that this was a special, and not a regular or biennial, session of the Legislature. The scope of the authority of a special session of the Legislature is to be found in section 40 of article 3 of the Constitution, which reads as follows: "When the Legislature shall be convened in a special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor, and no such session shall be of longer duration than thirty days."

From this it will be observed that, when the Legislature is convened in special session, such express limitation is placed upon the power of that body that it cannot legislate upon any subject or subjects except those specially designated in the proclamation of the Governor calling the body together, or such as may be subsequently presented to that body by the Governor. This limited rule set out in the above section does not apply to the Legislature when sitting in its biennial session. It will therefore be observed there is a marked difference between the power of the Legislature in regular session as compared with its power when sitting in a special session. The Legislature by the terms of article 2, § 1, of the Constitution, is made the lawmaking power of the state. This provision of the Constitution limits that body to legislation, unless there be found some other provision in that instrument authorizing it to exercise other powers and functions, such as, among other things, to present articles of impeachment against named officials, or expel members for sufficient cause. It also has power under article 3, § 15, to punish by imprisonment during its session any person not a member for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings, provided such imprisonment shall not at any time exceed 48 hours.

The question, then, here is: What may the Legislature do at a special called session in regard to legislation, and for what purpose by concurrent resolution, or a resolution of either house, and for what purpose may either or both houses appoint committees, and what subjects may be invested by said committee? To the mind of the writer, these are answered definitely by article 3, § 40. By the express terms of that section, the Legislature is expressly restricted and limited, first, to the passage only of such laws as the Governor has authorized in his proclamation, or in subsequent messages submitted by him; and, second, either or both houses may have authority to make investigations looking to the enactment of such laws as are within the proclamation or message of the Governor, but the Legislature may not and cannot investigate matters for legislative purposes not within the proclamation. Nor would the Legislature have authority to investigate matters the Governor declined to submit to it, and this proposition is intensified when the demand or request has been made upon him and he declines to accede. This, the writer understands, would be the limit of authority on the part of the Legislature to either legislate or investigate matters looking to legislation. This, as before stated, is more than intensified when the fact is taken into consideration that the Governor refused to refer or submit these matters for legislation. It is thought to be a correct statement that the Legislature either in general or special session would have no authority, either as a body or through committees, to investigate matters for legislation about which that body could not enact laws, and when they were without authority to so enact. It might be concluded as a correct proposition, so far as this case is concerned, that whenever the Legislature has authority to enact laws, it would have corresponding authority to make necessary investigations

for the ascertainment of such facts as would be necessary as a predicate for the enactment of laws wherein the matter was then pending and formed a part of the proceedings of that body. These rules apply as well to special as to general sessions, but there must be authority in either event as a predicate for legislative action upon the subject or subjects under investigation; otherwise, it could not be considered a part of the proceedings of the Legislature. If the above propositions are correct, then the special session had no authority to appoint the committee to investigate, and the committee so appointed was powerless to investigate matters about which that body could not possibly legislate or take action.

It is true the Legislature is one of the three co-ordinate branches of the government, and in a general way has power in matters of legislation; but there is to be noted a marked difference and distinction between the scope of power of the regular session and that of a special session of the Legislature. When that body meets in its biennial session, its authority to enact laws and make investigations is as broad as is the constitutional guaranty of power, to wit, as the lawmaking department of the government. The limitation of such power is to be found in the terms of the Constitution as expressed or necessarily implied. It is not the purpose here to go into any discussion as to the limitations of express or implied power, but the rule is entirely different when the Legislature meets in special session. In the latter case they have no authority to legislate, except as set forth by the Governor in his proclamation, or in subsequent messages sent by him to that body. These propositions being correct, the Legislature was without authority to create the committee before whom applicant was called upon to testify, and the committee was without authority to propound questions to or demand answers from this applicant. The House of Representatives, recognizing they had no such authority, called upon the Governor to submit such matters to them as would justify them in exercising such authority. This he declined. It must be evident, then, from this action of the Legislature, and the subsequent refusal of the Governor to respond to their wishes, that they had no authority to create the committee and make the investigation, and fully recognized that fact. The committee, under this view, was a body without authority to call witnesses, or to put questions and require answers from them. Their action did not form a part of the proceedings of that body and no obstruction could occur.

[3] It may be stated as a proposition incontrovertibly true that the Legislature derives its power from the Constitution, and is dependent solely on the Constitution for its existence and authority. Both houses of such body are but the creatures of the Constitution, and outside of the provisions of that instrument, would and could have no authorized existence. Both houses act under delegated authority, which, in a general way, is confined to legislative matters, except in a few instances where it is otherwise provided, and in no instance could it act as a judicial body, unless power is expressly conferred upon it by the Constitution for that purpose. Judicial power is conferred upon another branch of the government, to be exercised by it to the exclusion of other branches of the government. It would follow, then, that the Legislature, in matters within its jurisdiction, would have authority to protect itself against disrespectful and disorderly conduct in its presence, as well as for obstructing its proceedings. Some of the books speak of this as inherent power. Had the Constitution remained silent upon the question of the power of the Legislature to punish for contempt, we might be called upon to enter the domain of such inherent power and discuss it; but we are relieved from that by the terms of the Constitution, wherein it specifies how and when each branch of the Legislature may punish for contempt for such conduct. If it may be said that the Legislature would have inherent power to punish for contempt, it might also be said that the Constitution recognizes the fact and empowers that body to protect itself under the circumstances stated in article 3, § 15. That section fixes the limits of jurisdiction; at least, it sought so to do by the language employed. To a certain extent, under the terms of section 15, the Legislature may be said to have judicial authority, or rather it may be said it has authority to act in a judicial capacity in ascertaining the facts and assessing the punishment therein prescribed. Whether the power is inherent or not, section 15, art. 3, grants authority, as well as expressly limits the extent of that authority. It is, therefore, unnecessary to discuss the question of inherent power further than is stated in that section. Such authority, then, cannot be exercised in any instance by the Legislature, unless the contempt or punishment was for a violation of something the Legislature had authority to do.

There are some fundamental rules that have long since been decided, and have become so thoroughly settled in regard to matters of this sort, that they ought to be held conclusive. First, before a contempt punishment can be inflicted, the body seeking to impose the punishment must have jurisdiction of the subject-matter; second, it must have jurisdiction of the person; third, it must have authority to render the particular judgment that is rendered. The correctness of the above rules is not an open question in Texas, and ought not to be debatable anywhere. One of the best-considered cases involving these questions is found in an opinion by the then presiding judge of this court in Ex parte Degener, 30 Tex. App. 566, 17 S.

W. 1111. The question here involves the jurisdiction of the authority seeking to inflict punishment. It has been said that jurisdiction is of two kinds: First, the power to determine the particular matter and render some judgment upon the hearing; and, secondly, the power to render the particular judgment which was rendered. There was some conflict in the authorities for awhile upon some of these matters; but this all seems to have faded. Many of the cases cited in support of the above proposition will be found collated in Ex parte Degener, supra. That case has been followed in quite a number of opinions by this court a few of which will be enumerated; Ex parte Taylor, 34 Tex. Cr. R. 594, 31 S. W. 641; Ex parte Kearby, 35 Tex. Cr. R. 538, 34 S. W. 635; Ex parte Wilson, 39 Tex. Cr. R. 637, 47 S. W. 996; Ex parte Duncan, 42 Tex. Cr. R. 661, 62 S. W. 758; Ex parte Snodgrass, 43 Tex. Cr. R. 359, 65 S. W. 1061; Ex parte Lake, 37 Tex. Cr. R. 656, 40 S. W. 727, 66 Am. St. Rep. 848. In Ex parte Duncan, supra, it was held there must be contempt in order to justify punishment for the offense, and the facts must justify the judgment imposing such punishment. "There are three essential elements necessary to render a conviction valid. These are that the court must have jurisdiction over the subject-matter, the person of the defendant, and the authority to render the particular judgment. If either of these elements is lacking, the judgment is fatally defective, and the prisoner held under such judgment may be released on habeas corpus." In addition to the authorities cited, supra, on these propositions, there will be found cited in the report of the Duncan Case the following cases: Ex parte Tinsley, 37 Tex. Cr. R. 517, 40 S. W. 306, 66 Am. St. Rep. 818; Ex parte Kearby & Hawkins, 35 Tex. Cr. R. 531, 34 S. W. 635; Brown on Jurisdiction, §§ 109 and 110; Ex parte Lake, 37 Tex. Cr. R. 656, 40 S. W. 727, 66 Am. St. Rep. 848.

It was further held that "jurisdiction of the person and subject-matter are not alone conclusive, but the authority of the court to render the particular judgment is the subject of inquiry; and if, upon a review of the whole record, it appears that a judgment unwarranted by law was entered, the party thus placed in contempt will be released, under the writ of habeas corpus. Same authorities." Following the above quotation are a great number of cases cited in the opinion in the Duncan Case, supra. It has also been held that the judgment is not conclusive upon the question of the authority of the court, or the body imposing the contempt; but, where the facts justify it, the court will go behind the judgment and inquire into the facts, and if the facts are such that ought not to justify or permit the particular judgment rendered, then the applicant will be discharged upon writ of habeas corpus. This was expressly decided in Parker v. State, 35 Tex. Cr. R. 12, 29 S. W. 480, 790, and Ex parte Juneman, 28 Tex. App. 488, 13 S. W. 783. This doctrine was reasserted in Ex parte Duncan, supra. The leading case in the United States on the question involved in this case is Kilbourn v. Thompson, 103 U. S. 168, 26 L. Ed. 377. That case has been followed in quite a number of cases, and, in our judgment, clearly settles the law in this case in favor of the applicant. It is not the purpose of this opinion to review the Kilbourn Case, but it is referred to approvingly as setting forth correct principles of law applicable to the questions here involved. See 7 Am. & Eng. Ency. of Law, 62–65, and notes, for cases.

It would follow from what has been said that, the Legislature not having power to legislate upon matters about which the investigation was had at the called session, the action of the House creating the committee was without authority; and, this being true, the committee would not have power to make the investigation, call witnesses before it, ask questions, or demand answers. If the House was not authorized to legislate upon any of the matters about which the investigation was made, it would necessarily follow that that body could not impose punishment for contempt upon the refusal of the witnesses to appear before the committee, or, appearing, refusal to give testimony sought to be elicited. It would be clearly beyond the jurisdiction of the committee and of the Legislature, and, therefore, the rules above set forth would apply; that is, that body would have neither the jurisdiction of the subject-matter, of the person, nor the authority to render any judgment, much less the judgment it did render. From this viewpoint of this record, the applicant is entitled to his discharge.

[4] In regard to the second original proposition, it may be said, conceding the Legislature had authority to appoint the committee, and the committee had jurisdiction of the subject-matter by virtue of its appointment by the legislative body, and had jurisdiction of the person of applicant by having him before the committee, still there would be authority wanting under this record justifying them in imposing the punishment for contempt. The matters inquired about were such matters as did not require applicant to answer and could form no basis of a judgment. They suggested no violation of any law of this state, and, if they did, the Legislature was not authorized to investigate violations of law. That belonged to the judicial department. Nor could applicant be required to criminate himself. They were matters not necessary in any way to aid the legislative body in reaching a conclusion on any matter submitted to it by the Governor. That body could not revise the election laws, and could not legally engage in any proceedings tending to such revision, because the Governor had refused to submit such matters

to them. There was nothing before the Legislature to which the answers of the witnesses, whatever those answers might have been, could possibly have been germane. The only purpose for which that Legislature was called was to legislate on specified subjects. It was not authorized to collect data for future legislation, nor with a view of legislating upon any matter not submitted to them; and, if it attempted to do so, such attempt cannot be termed legal proceedings of the house. Being a called session, its power was limited to the 30 days mentioned in the Constitution, and exclusively to the questions mentioned by the Governor in his proclamation calling them together, and in such communications as he might subsequently make. These constituted the only proceedings to be indulged in by the Legislature. It would hardly be contended seriously that this Legislature could sit longer than 30 days for any purpose. The Constitution had put a limit to its existence at the expiration of the 30 days. This clause (section 40, art. 3), in regard to the 30-days limit, is no more binding than other clauses of the same section. It will be observed, then, that the rule governing the power of a special session is the reverse from the rule that controls the general session with reference to legislative authority. One is general; the other is specifically restrictive and restricted.

[5] There is some intimation that the Governor, after the committee had been organized, sent a communication asking an increase in the appropriation bill from what it had theretofore been under previous appropriations, looking to the enforcement of the law. That message was to the effect that he desired an increased appropriation from what had theretofore been given. By no stretch of reasoning could this matter justify the action of the committee here under discussion. Theretofore the Legislature had been appropriating less than the amount of money requested by the Governor. This request from the Governor was for an increased appropriation to the amount of $27,500. Without placing it upon the ground, directly or indirectly, that the message was subsequently sent in by the Governor, and that, therefore, the committee could not extend its jurisdiction to that matter, because of its original illegality, it is too clear for discussion that this did not justify the committee in its course of investigation of the July election. It was but an item of appropriation which was asked by the Governor to be enlarged from what it had theretofore been, and for the purposes of prosecuting before the courts those who were violators of the law. We hardly think it would be contended, either seriously or otherwise, that that matter would justify the committee in their action. I have written beyond what I had intended, and perhaps more than is necessary.

For the reasons indicated, we are of opinion that the applicant is illegally restrained of his liberty. It is therefore ordered that he be discharged from custody. There are other questions presented, but the above matters discussed dispose of the case.

HARPER, J. (concurring). Having expressed my views so fully in the case of Ex parte Gray, 144 S. W. 569, this day decided, I hardly deem it necessary to write an opinion in this case; but, inasmuch as I do not concur fully in the opinion of either Judges DAVIDSON or PRENDERGAST herein rendered, both of which have been written since I wrote the opinion in the Gray Case, it may not be amiss for me to briefly state my views.

[6] I do not concur in the opinion of Judge DAVIDSON wherein he holds that at a special session the Legislature would not have authority to create this committee. The Legislature fully appreciated it had no right to enact laws in regard to amending the election law, or it would not have petitioned the Governor to submit this question; but the right of petition is one guaranteed by the Constitution, and, when they had decided to petition the Governor, it was not amiss for them to seek to obtain information to enable them to act promptly. Judge DAVIDSON is in error wherein he alleges the Governor informed the Legislature he would not submit the question. In answer to the petition to submit this question, the Governor informed the Legislature: "When the appropriation bill is passed, the Governor will consider the advisability of submitting additional questions for the consideration of the Legislature." (Page ——, House Journal.) Instead of refusing, this was a promise that he would "*consider the advisability*" of submitting these questions, and if the Legislature, through a committee, sought to elicit information to impress upon him the necessity of such legislation, it was within the scope of their authority.

[7] The Legislature at a special session has all the power it has at a regular session, except that which is inhibited by the Constitution. Section 5 of article 3 of the Constitution provides that the Legislature shall meet every two years, and at other times when convened by the Governor. If this was all, there would be no limitation on their authority at a special session, which would not also apply to a regular session. However, in section 40 of the same article, it is provided there shall be no "*legislation*" upon subjects other than those designated by the Governor. This is the sole limitation upon their power at a special session, and, as shown in the Gray Case, this word has a well-defined meaning in law—the passage of laws, the repeal of laws, or the amendment of laws. The Legislature recognized this limitation and petitioned the Governor

to submit this matter. This they certainly had the right to do, and it has never been considered that this limitation narrowed their power to limits it is now sought to confine it.

At every special session of the Legislature, resolutions have been passed not mentioned in the proclamation of the Governor. In 1910, at a special session, the Legislature provided by resolution for the removal of the body of Stephen F. Austin, and to pay therefor out of the contingent fund. No one questioned their authority, and for a number of years the Legislature at every special session has passed resolutions not mentioned in the proclamation of the Governor, and no one questioned their right to do so. The Thirty-First Legislature provided for an investigating committee to sit in vacation, and examine into penitentiary affairs, and recommend legislation, and the Governor was so impressed by the evidence and recommendations that he convened the Legislature in special session and submitted the enactment of laws on this question to them, and if the Thirty-Second Legislature thought the election laws needed amendment, it was within its province to gather information, and thus seek to impress the Governor with the necessity for such laws, and, if the investigation had so impressed the Governor, we are impelled to believe he would have submitted the question; for, instead of refusing to do so, he told the Legislature he would consider the advisability of doing so. At least, they had the authority to gather and preserve the information for future use. And, in so far as the House committee is concerned, we do not think any one can seriously question its right to appoint one, or that the committee was legally constituted. Section 8 of article 3 provides that "each House shall be the judge of the election and qualifications of its members," and subdivision 8 of the House resolution provided for this committee to *investigate the election and qualifications of its members.* That they had this right none can gainsay. This is discussed at length in the Canfield Case, 82 Tex. 10, 17 S. W. 390, referred to in the Gray Case, and in the opinion of Judge PRENDERGAST in this case, and recently at a special session of the United States Senate by simple resolution it provided for a committee to investigate the election of Senator Stephenson, and this committee has been conducting this investigation in vacation. We think to hold that the House did not have the right to appoint this committee is not only against the weight of authority, but is in the face of all the authorities.

[8] Again, we do not agree with Judge DAVIDSON when he holds that "the matters inquired about were such matters as did not require the applicant to answer." Neither do we agree with Judge PRENDERGAST that "all the matters inquired about were matters that the Legislature was authorized to inquire into." As said in the Gray Case, we hold that the Legislature would have the right to obtain information which would enable it to correct any evil that might exist, upon which they would be authorized to control or regulate. The information sought must be such as they, in their legislative capacity, would have a right to collect, and the information obtained must be such as would aid them in arriving at a correct conclusion. Relator was asked the question: "Will you state the character of expenses made by you in a general way?" The Legislature has the right to legislate upon elections, and limit the purposes for which money may be spent; and this question we think they had a right to ask, and it should have been answered. Again, the question, "Will you state the amount expended in preparing, mailing, and distributing campaign matter?" was a proper question, for the Legislature would have the right to limit the amount to be thus expended in an election. But the questions which sought to elicit information as to what individuals contributed to the fund, or the amount of such contribution, were improper; for the Legislature would not have the right to prohibit an individual from contributing, unless it should prohibit all individuals, and, in seeking to obtain the names of the contributors, it was seeking information which it had no right to demand. We have referred to these isolated questions to make our holding clear that the information sought must be such as the Legislature would have the right to regulate or control by law, and, when the questions go beyond that scope, they are seeking what they have no right to demand. Others might be quoted, both pro and con, but we refer to these to make our holding clear.

In the third place, we do not agree with Judge PRENDERGAST wherein he holds that failure to answer a question propounded by an investigating committee is "obstructing the proceedings of the Legislature." We have read carefully the cases cited, and in all of them that so hold it is so held on the ground that they have this "inherent power," because the English Parliament has always exercised this power. In none of the cases did the states, wherein it is so held, have a Constitution worded as is ours: "*And no person or collection of persons being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.*" In the New York case, People v. McDonald, 99 N. Y. 481, 2 N. E. 615, 52 Am. Rep. 49, it is expressly stated that the Constitution of that state has no such provision. In the South Carolina case, Ex parte Parker, 74 S. C. 466, 55 S. E. 122, 114 Am. St. Rep. 1011, it is held that even a committee has the power to exercise this judicial authority. No other court so holds; but even in that case it

is held that the committee must act within the limits prescribed by the Constitution.

In the Massachusetts case, In re Whitcomb, 120 Mass. 121, 21 Am. Rep. 502, it is held that the Legislature of that state had the power, on the ground that "each house of the British Parliament had the largest power to punish every description of contempt of its authority. * * * But, according to the decisions of most eminent judges, either branch of a colonial Legislature has no such power of punishment (Kelly v. Carson, 4 Moore, P. C. 63; Hill v. Weldon, 3 Kerr, N. B. 1), even for refusal to attend as a witness when duly summoned (Fenton v. Hampton, 11 Moore, P. C. 347), or for contempts committed in the face of the house (Doyle v. Falconer, L. R. 1 P. C. 328), unless by established usage (Beaumont v. Barrett, 1 Moore, P. C. 59), or by express act of the imperial Parliament (Dill v. Murphy, 1 Moore [N. S.] 487; Speaker v. Glass, L. R. 3 P. C. 560). So in Ex parte Brown, 5 B. & S. 280, the Court of King's Bench held that the House of Keys, which was the lower branch of the Legislature of the Isle of Man, and had also judicial functions in appeals from the verdicts of juries, had no power to commit for contempt, when acting in its legislative capacity. It is universally admitted that by the law of England a town or city council had no power, without express act of Parliament, to make an ordinance with penalty of imprisonment, or to commit for contempt of its authority. Grant on Corp. 84–86; Parke, B., in 4 Moore, P. C. 89; Barter v. Commonwealth, 3 Pen. & W. (Pa.) 253. The British Parliament has supreme and uncontrolled power, and may change the Constitution of England, and repeal even Magna Charta, which is itself only an act of Parliament. But in this Commonwealth the legislative as well as the executive authority, and the courts of justice, is controlled and limited by the written Constitution, and cannot violate the safeguards established by the twelfth article of the Declaration of Rights. Emery's Case, 107 Mass. 172, 9 Am. Rep. 22. In the United States, each branch of a supreme legislature has the same power to commit for contempt as either house of Parliament. Such a power has been adjudged to be inherent in the federal Senate and House of Representatives, although not expressed in the Constitution. Anderson v. Dunn, 6 Wheat. 204, 5 L. Ed. 242. A like power doubtless exists in each branch of the General Court of Massachusetts, and of other state Legislatures, which are supreme within their sphere, and not, like the colonial assemblies of Great Britain, created by and subordinated to the national legislature. Burnham v. Morrissey, 14 Gray (Mass.) 226, 74 Am. Dec. 676; State v. Matthews, 37 N. H. 450; Falvey's Case, 7 Wis. 630. But in Anderson v. Dunn the court said that 'neither analogy nor precedent would support the assertion of such powers in any other than a legislative or judicial body.' 6 Wheat. 233, 234, 5 L. Ed. 242. To such a subject the words of Lord Coke apply with peculiar force: 'When authority and precedent is wanting, there is need of great consideration, before that anything of novelty shall be established, and to provide that this be not against the law of the land.' 12 Rep. 75. At the time of the adoption of the Constitution of the commonwealth, it was no part of the law of the land that municipal boards or officers should have power to commit or punish for contempts. The second article of amendment of the Constitution, which first conferred upon the General Court 'full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this commonwealth,' authorized it to grant to the inhabitants thereof such powers, privileges, and immunities, 'not repugnant to the Constitution,' as it should deem necessary and expedient for the regulation and government thereof, and provided 'that all by-laws made by such municipal or city government shall be subject at all times to be annulled by the General Court.' The city council is not a legislature. It has no power to make laws, but merely to pass ordinances upon such local matters as the Legislature may commit to its charge, and subject to the paramount control of the Legislature. Neither branch of the city council is a court, or, in accurate use of language, vested with any judicial functions whatever. Nor are its members chosen with any view to their fitness for the exercise of such functions. To allow such a body to punish summarily by imprisonment the refusal to answer any inquiry which the whole body, or one of its committees, may choose to make, would be a most dangerous invasion of the rights and liberties of the citizen."

Thus it is seen that, in those states holding that the Legislature has such judicial power, it is on the ground that there is no constitutional inhibition, and they possess the inherent power because it was exercised by the British Parliament. But in this state we have an inhibition in the Constitution. Therefore our Legislature has no inherent power to punish for contempt, and it cannot do so except in cases where specifically authorized; for, as said in the Massachusetts case: "Neither branch is a court, or vested with judicial functions. Nor are its members chosen with any view of their fitness for the exercise of such functions. To allow such a body to punish summarily by imprisonment the refusal to answer any inquiry which one of its committees may choose to make would be a most dangerous invasion of the rights and liberties of the citizen." And in Rapalje on Contempt it is said: "The two houses of the English Parliament and the Legislatures of the several states have this power, except when restricted by constitutional limitations"—citing authorities. In this state we have constitutional limitations.

From judicial and legislative history, and from personal knowledge, the writer knows that the Senate and House each keep a daily journal, recording its proceedings, and that in the past it has never been considered that the proceedings of an investigating committee were *proceedings of the House or Senate*, and such proceedings do not appear in the daily journal of proceedings of either house. Investigating committees sit while the Legislature is in session, and while it is not in session, and by no stretch of imagination can the proceedings of an investigating committee sitting in vacation be considered "proceedings of the house while in session," and it cannot be proceedings of the house in one instance and not in another.

Those cases that hold the Legislature has this power hold that it is sitting as a court, and that no other tribunal has the right or authority to inquire into its judgments, but they are final, and, even though the questions may invade the rights guaranteed the individual by the Bill of Rights, and are such questions as they have no authority to ask, yet their judgment is final, and the citizen must suffer the penalty. To this doctrine we cannot give our assent. Our government was so framed that no individual or department of government could act tyrannically, and take from the citizen his liberty without just cause. The executive cannot promulgate a law and have the citizen tried and punished, and, if he should do so, this court will relieve against such arbitrary acts. The legislative branch cannot invade the Constitution, and if it does, we will restrain. This court cannot act tyrannically; for, if so, the Governor is given power to relieve by exercising the pardoning power. Absolutism has but little place in our form of government, and, being of the opinion that the Legislature is prohibited from exercising judicial power, except in those instances wherein authorized, and that it has no power to punish for contempt, except in the instances authorized in section 15 of article 3, we are constrained to the opinion that relator should be discharged. In Rapalje on Contempt it is said: "In this country the courts have unquestioned power to decide upon the validity of the commitment for contempt by a legislative body; i. e., to pass upon the question whether the Legislature acted within its jurisdiction in the particular case. But in England the doctrine of the omnipotence of Parliament shuts the door to such inquiry, and each house of Parliament is the exclusive judge of the contempt of its own authority"—citing many authorities to be found on page 4. We are truly glad that no department of this government has been held to be "*omnipotent.*"

This question has not been one easy for us to solve. We read the authorities before writing the Gray opinion. Since Judges DAVIDSON and PRENDERGAST have written their opinions, we have again reviewed the authorities, and, while reluctantly, yet we are forced to the conclusion that our Legislature has no right to adjudge one guilty of contempt in this character of proceedings; for failure to answer a question propounded by an investigating committee is not an "obstruction of legislative proceedings" during its sessions.

PRENDERGAST, J. (dissenting). Some of the legal questions to be decided in this case are identical with those in the Gray Case, 144 S. W. 569, a companion case to this, and this day decided. But there is at least one additional feature in this that is not in the Gray Case. The main facts on the common questions are substantially the same in both cases. Yet, as there are some differences, and there are additional facts on the additional feature in this, not in the Gray Case, I deem it of sufficient importance, if, indeed, it is not essential, to give the full facts in this case. It is, of course, to be regretted that this statement will necessarily be quite lengthy.

It was agreed by all parties and their attorneys on this hearing that the journals of this special session of the Legislature should be considered in evidence, and they were introduced in evidence. This court could, and would, take judicial notice of them and their contents in this case, whether introduced or not. Every person can see them and know of their contents, even though no portion should be copied herein.

Under section 8, art. 4, of the Constitution of this state, the Governor by proclamation of June 20, 1911, convened the Thirty-Second Legislature in special session on July 31, 1911, for these purposes, stated therein: (1) To make appropriations to run the government for the fiscal years beginning September 1, 1911 and 1912. (2) To apportion the state into senatorial and representative districts. (3) "To consider and act upon such other matters as may be presented by the Governor, pursuant to section 40, article 3, of the Constitution of Texas." House Journal, p. 2. Said Legislature duly convened as called, and on the first day duly organized and adjourned to the next. The first thing done by the House after formally opening and making announcements the next day, August 1st, was the introduction by some of the members of this resolution:

"Requesting the Governor to Submit Subjects for Legislation.—Mr. Maddox offered the following resolution:

"House Concurrent Resolution No. 1, requesting the Governor to submit certain subjects for legislation at the present called session.

"Resolved by the House of Representatives, the Senate concurring, that the Governor of this state be and he is hereby requested to designate and present to the present called session of this Legislature, for the con-

sideration of the Legislature and for legislation, the following subjects:

"First. Legislation amending the election laws of this state so as to provide against illegal payment of poll taxes, and to enact such further laws as may be necessary to safeguard the ballot boxes and secure fair and honest elections without a taint of irregularity, fraud or bribery.

"Second. Legislation prohibiting breweries, brewery owners and stockholders therein, saloons, saloon owners and all other persons connected, directly or indirectly, with the liquor traffic in this state, from contributing to campaign funds to influence elections, and to prohibit all persons within this state from receiving, using or disbursing such funds as may be so contributed by the liquor traffic, its associations, subsidiaries or persons connected therewith, and to provide adequate and effective penalties for the violation of such law.

"Third. The enactment of suitable legislation requiring all persons engaged in the sale of intoxicating liquor to close their places of business from (7) seven o'clock p. m. until (6) six o'clock a. m. and to keep the same closed, and to provide suitable penalties for the sale of intoxicating liquors by such persons doing business in this state in violation of such law.

"Fourth. Legislation prohibiting the sale of liquor within this state in unbroken packages and quantities less than one quart, and prohibiting the same from being drunk on the premises where sold, with effective penalties for violation of such law.

"Fifth. Legislation prohibiting the sale of intoxicating liquors within ten miles of any state educational institution, including the State University, that is supported in whole or in part by appropriations from the state's general revenue, and for effective penalties for the violation of such law.

"Sixth. Legislation increasing the license tax on individuals engaged in the retail or wholesale of intoxicating liquors."

This was at once referred to one of the House standing committees. On August 2d the Governor by special message submitted two additional subjects of legislation. Neither of these were embraced in the resolutions above. Journal p. 30. On August 3d the following preamble and resolutions were offered by members of the House:

"Providing for Investigating Committee.—Mr. Gilmore offered the following resolution:

"Whereas, it has been charged by the executive committee of the State-Wide Prohibition Amendment Association, through a report made by a subcommittee of such executive committee, which said report was signed by the following named citizens of Texas as members of said subcommittee: Thos. H. Ball, B. F. Looney, Thomas B. Love, W. J. McDonald, Cullen F. Thomas, D. E. Garrett, R. Harper Kirby, Jack Diss, W. T. Bartholomew, T. G. Harris, William E. Hawkins, B. H. Powell, J. S. Crumpton and Richard Mays —that in the recent election held in this state on July 22, 1911, there were many fraudulent and illegal ballots cast and other methods of fraud and evasion of the election laws resorted to at said election, and other charges made concerning the purity of the ballot box; and

"Whereas, such committee charges that they have gone far enough into an investigation of such election to convince them to a moral certainty that the result of the election of July 22, 1911, does not represent the verdict of a majority of the qualified voters of the state lawfully entitled to participate in the election; and

"Whereas, such committee charges that evidence has been submitted to them which convincingly shows that at the very inception of the contest over the state-wide prohibition amendment and in preparation therefor, that the liquor interests entered into a widespread conspiracy to control the election by the use of very large numbers of poll tax receipts illegally issued, and that where sworn officers of the state, such as tax collectors, could be reached, poll tax receipts were procured directly from their offices and mailed to voters who had never applied for them, or made the necessary affidavits, although the receipts issued therefor showed upon their face that all the requisites of the law had been complied with; and

"Whereas, it is further charged by said committee that in a number of counties it was the practice to have deputies, in some instances negroes, to go out and solicit the payment of poll taxes, their services being paid for by the liquor interests, which also paid for the poll tax receipts; and

"Whereas, it is further charged by said committee that in one county, and in one box in one section of the state about one hundred (100) poll tax receipts were shown to have been paid for by the local agent of the breweries, while in another county in another section of the state it is charged that the tax collector turned over his book containing the poll tax receipts to saloon keepers, who in turn issued some seven hundred (700) such receipts, signing the name of the collector thereto, one of the saloon keepers being a negro; and

"Whereas, it is charged by said committee that in another county of the state some four hundred (400) poll tax receipts were issued and kept in a convenient safe to be used at the time of said election, and that in the same county one negro handed in three (3) poll tax receipts as his authority to vote, and that one negro killed by a train just before said election is shown to have had thirty (30) poll tax receipts on his person, with blank for name of voter unfilled, but which receipts were signed by the tax collector, while it is charged that in another county a Mexi-

can leader approached the prohibition manager and showed that he was in control of twenty (20) poll tax receipts and offered to deliver that number of Mexican votes for five dollars ($5.00) per head, which offer the prohibition manager declined, and had the Mexican leader arrested; and

"Whereas, it is further charged by said committee that in one county deputies were sent out who issued large numbers of poll tax receipts, receiving in return therefor a paper token which was cashed by the liquor dealers so that the money therefor could be returned to the state and city tax collector, and that in a number of counties such committee received evidence that negroes in possession of poll tax receipts had admitted they were given to them or had been sent to them and which they had not paid, and for the issuance of which they had given no order; and

"Whereas, said committee charges that they could multiply instances of like kind and character, and other evidences of irregularity and fraud, and state that they give their assurance that the reports and facts before them will be available at proper times and places; and

"Whereas, said committee states that they have inquired into, as far as they could, the Mexican vote, and that the law and other efforts will not reach a very large number of this class of voters voting, and that the worst condition of this character found expression in the returns from Zapata county, a county of this state; and

"Whereas, said committee charges that their reports show a goodly number of boxes in the rural precincts in the wet districts where the failure of a law to require exemption certificates, as in large cities, gave fraudulent opportunities for voting; and

"Whereas, said committee further charges that conservatively more than eighty (80) per cent. of the negro vote of the state was controlled by the liquor traffic by corrupting many, by the basest appeals to their fears and prejudices, by threats of their re-enslavement and disfranchisement, by money and whisky and the payment of their poll taxes; and

"Whereas, said committee further charges that judicial investigations just before the election were hampered in every way by those indirectly interested in the preservation of the liquor traffic or their hirelings, but disclosed in a number of sections of the state, notably Austin, its capital city, that gross irregularities and violations of the law had been committed in the matter of issuance and payment of poll taxes, and that these investigations were everywhere hindered and delayed by methods that could not be condemned in terms too severe, and that in nearly every instance saloons were directly connected with such methods; and

"Whereas, the aforesaid committee in its published report charges that the conditions reported to such committee and the facts submitted to them imperatively demand that the Legislature should at once institute a most rigid investigation and that they appeal to that body to use all the agencies at its command for the purpose of securing testimony and facts in every section of Texas where they can be had looking into the matter of fraudulent voting, poll tax paying, the use of money and the connection of the liquor traffic therewith; and

"Whereas, said committee charges that the facts that will be available to a legislative committee will amply warrant the expenditure of any sum that is appropriated for the purpose alone of providing as far as possible against the recurrence of such conditions that have made possible the official returns upon the constitutional amendment, by enabling the lawmaking body to throw further safeguards around the conduct of all future elections; and

"Whereas, said committee charges that the will of the people in the matter of amending their state Constitution has been subverted and overthrown by the shameless use of an unlimited corruption fund contributed by the liquor interests; all of which foregoing charges and others connected therewith are shown in a copy of the report of said committee given to the press, which copy is herewith attached and marked 'Exhibit A'; and

"Whereas, the preservation of free government and of the right of the people to control their governmental affairs depends upon maintaining and safeguarding the purity and freedom and honesty of the ballot and the uncorrupted independence of the voters—in short, upon a patriotic and uncorrupted ballot properly safeguarded so as to secure it against any improper influence and to insure that it will be counted as cast by the voter; and

"Whereas, the laws of this state regulating elections have been recently enacted and changed many times during recent years, and are in need of revision and amendment, as has been generally admitted by many eminent citizens familiar with such laws and their operation; and

"Whereas, the conduct of the election held on the 22d of July, 1911, will, if investigated, place this and future Legislatures of Texas in possession of information which will be very valuable for the purpose of promoting the formulation and passage of such laws as will properly safeguard the purity, freedom, and honesty of the ballot and insure that it will be counted as cast and returns of election made in accordance with the ballots as cast; and

"Whereas, it is charged and believed by a great number of citizens, and has been published in many newspapers throughout the state, that large sums of money were used to influence the result of the election held on July 22, 1911, and the manner in which such money was used and the large amount al-

leged to have been used, has been challenged and criticised as having been improper, unlawful, and against sound public policy, which charges, if true, demand further legislation that will prohibit the corruption of the ballot; and

"Whereas, section 4 of article 6 of the Constitution of this state provides: 'In all elections by the people the vote shall be by ballot, and the Legislature shall provide for the numbering of the tickets, and make such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot box;' and

"Whereas, it appears that the laws passed in pursuance with this constitutional provision have, if the charges heretofore referred to are true, proven inadequate to protect the purity of the ballot box; and

"Whereas, it becomes of vital importance to this or any subsequent Legislature, which may legislate for the purpose of carrying out this constitutional provision, that the methods used to evade and violate the laws and destroy the purity of the ballot box be known in order that adequate laws preserving the purity of the ballot box be enacted by this or a subsequent Legislature, and the evidence of the violations and evasions of the laws preserved for the assistance of this or any subsequent Legislature which desires to legislate to protect the purity of the ballot box; and

"Whereas, unless an investigation be now made much of the testimony and evidence of fraud, corruption and evasion will be destroyed and become inaccessible: Therefore, be it

"Resolved by the House of Representatives of the Thirty-Second Legislature that the Speaker of the House be authorized, and that he do immediately upon the passage of this resolution appoint a committee of nine (9) members of the House of Representatives, at least six (6) of whom shall be favorable to the adoption of the state-wide prohibition amendment recently voted upon on July 22, 1911, which committee shall investigate and determine and report to the House:

"(1) As to whether or not there were any poll taxes illegally paid or receipts or exemption certificates illegally issued within this state, and if paid, or issued, the method and manner by which the same were paid or issued, and by whom issued or paid, and for and to whom paid or issued, and by whom the money was furnished for such purpose.

"(2) All violations and evasions of the election laws of this state, and the method and manner of such violations and evasions, and by whom the same were made and instigated.

"(3) Whether or not money was corruptly and unlawfully used in any manner by any one to influence the result of the election held on July 22, 1911, by whom same was used, how the same was used, and by whom, to whom and how same was furnished.

"(4) Also to determine, if any, the amount of money used to influence the result of said election, and the amount expended in such election by any person, corporation, association of persons, or by any organization maintaining a state, county, or precinct headquarters or organization, and by whom the same was used and how the same was used, and by whom, to whom and how the same was furnished and used.

"(5) To investigate and determine whether or not a conspiracy or agreement was entered into by and between any persons or corporations to corrupt the electorate and debauch the ballot box.

"(6) Also to investigate all the charges heretofore referred to in the preamble of this resolution in so far as such investigation will elicit information which will enable the Legislature to amend and strengthen the present laws and pass new and additional laws to detect and punish fraud, and preserve the purity of the ballot box.

"(7) Also to investigate whether or not there exists in this state an organization of any kind furnishing or expending money to improperly influence elections in this state or legislation in this state such as would contravene sound public policy, and what legislation may be necessary, if any, to remedy such evils.

"In addition to all of the power necessary to carry out the full and complete terms of this resolution, said committee appointed hereunder shall have all of the authority conferred by law under chapter 7 of the Acts of the Thirtieth Legislature, which were passed at the regular session of the Legislature, and shall act under this resolution and under such act of the Thirtieth Legislature referred to.

"In addition to the power conferred by the act of the Thirtieth Legislature above referred to relating to punishment for the refusal to obey any process issued by this committee, any one refusing to be summoned or any one evading any process issued by said committee, or any one who shall refuse to appear before said committee in person, or to produce any books, papers, letters, telegrams, or other things called for and demanded by said committee, shall be held to be in contempt of this House and shall be brought before the bar of this House for such contempt, and shall there be dealt with as the members of this House may deem necessary.

"All the necessary expenses incurred by the members of the committee, or incurred under its direction and in pursuance of this investigation, shall be paid out of the contingent expense fund of the House.

"The name and title of the committee herein appointed shall be the House Investigating Committee, and such committee shall elect its own chairman and such other officers as it may desire, and establish and make such rules for governing its own pro-

cedure and forms of process as may be permitted by law.

"Such investigating committee shall cause the testimony of all witnesses to be taken by competent stenographers, question and answer, and shall make a report to the House at this session of the Legislature, and shall accompany such report with the evidence taken by it, and its recommendation for such changes in the present election laws and for the enactment of such new laws as the evidence adduced and the facts developed may demand for the preservation to the people of their constitutional right of a pure ballot box."

I think it unnecessary to copy "Exhibit A," attached and called for in the preamble to these resolutions. However, besides those named as signers, it was signed and approved by some 37 of the most prominent citizens of Texas, as the other members of the state executive committee of said Amendment Association, and the whole of said resolutions are on pages 36 to 43 of the House Journal. After consideration thereof, on August 5th, the following amendment was added to the resolution last above copied:

"(8) Also to investigate all charges heretofore referred to in the preamble hereof, and other pertinent charges, for the purpose of determining whether or not money, or anything of value, or any reward or promise of reward, or compensation or promise of compensation of any character, has been improperly used in this state for the purpose of securing or affecting in any way the election or qualification of the members of the House of Representatives, and to determine whether or not by reason of any or all of said charges the truth of which may be established, or any or all facts that may be established under any or all of the preceding divisions of this resolution clause, there exists in this state a conspiracy, or formed purpose, or design, improperly to control, secure or affect, in whole or part, the election or qualifications of the members of the House of Representatives."

And then the whole was adopted by the House *on August 5th.* Journal, 68, 69. On the same day the Speaker duly appointed this investigating committee. *These resolutions were not acted upon by the House until after the Governor had sent the message now shown.*

[9] *Before this resolution was acted upon or adopted by the House, the Governor sent to the House this message and proclamation:*

"Executive Office, Austin, Texas, Aug. 5, 1911.

"To the Texas Legislature:

"In the appropriation bill passed by the Thirty-First Legislature there is an item which reads as follows: 'Payment of rewards and other necessary expenses for the enforcement of the law, $7,500.' The foregoing sum was appropriated for the fiscal year ending August 31, 1911, for the purpose named. There remains unexpended a balance of $5,815.19, which is available for the enforcement of the law.

"It is alleged that irregularities and frauds were committed in the recent election on the proposed amendment to the state Constitution prohibiting the manufacture and sale of intoxicating liquors in Texas. It is also charged that in different counties and localities individuals and county officials violated the law regulating the payment of poll taxes.

"The Constitution of the state makes it the duty of the Governor to see that all laws are faithfully executed. I am determined to employ all means and agencies at the disposal of the Governor to investigate the alleged frauds and prosecute any and all offenders. It has been the universal practice of the Legislature to appropriate money to the Governor for the payment of rewards and other expenses necessary for the enforcement of the law. I respectfully recommend to the Legislature that this item in the pending appropriation bill be increased for the fiscal year beginning September 1, 1911, to $27,500. It has been suggested that I recommend to the Legislature an extra appropriation for the purpose of investigating violations of the poll tax and election laws, and the enforcement of same against the offenders, and that if I would do so an effort would be made to raise an additional sum of $10,000 from Prohibitionists and Anti-Prohibitionists for the purpose of securing an enforcement of these laws. I do not believe we should rely upon such public contributions; but, if the law has been violated, it is the duty of the Governor to see that it is enforced. It is equally the duty of the Legislature to furnish me with means to enforce the same.

"I have issued proclamation offering a reward of $50 for the arrest and conviction of any person or persons guilty of fraudulent acts against the poll tax law, or guilty of fraudulent irregularities in the recent prohibition amendment election. I attach a copy of this proclamation hereto and make it a part of this message. I urge upon the Legislature, therefore, to increase the appropriation for the enforcement of the law in the sum mentioned, that I may not be embarrassed for the want of funds to prosecute those guilty of frauds against the statutes named.

"Respectfully submitted,

"O. B. Colquitt, Governor of Texas.

"Proclamation by the Governor of the State of Texas.

"$50.00 Reward.

"To All to Whom These Presents shall Come:

"Whereas, it has been publicly alleged and charged that various and sundry per-

sons, not named, in various and sundry counties and localities in Texas, not mentioned, have violated the law regulating the paying and issuing of poll tax receipts; and

"Whereas, it is alleged and charged, without naming the persons and places, that gross irregularities and frauds were practiced in the holding of the election on July 22d on the proposed amendment to the Constitution of the state of Texas prohibiting the manufacture and sale of intoxicating liquors in this state, and

"Whereas, under the Constitution it is made the duty of the Governor to see that all laws are faithfully executed:

"Now, therefore, by virtue of the authority vested in me by the Constitution and laws of this state, I, O. B. Colquitt, Governor of Texas, hereby offer a reward of $50.00 for the arrest and conviction of any person guilty of fraudulently paying for poll tax receipts, or any person fraudulently issuing the same, and by virtue of the authority vested in me by the Constitution and laws of this state I offer a reward of $50.00 for the arrest and conviction of any person holding the election and making returns of same who may be guilty of fraudulent acts against the election laws of this state or the purity of the ballot, or any person guilty of unlawfully intimidating legal voters.

"In testimony whereof, I have hereto signed my name, and caused the seal of state to be affixed, at the city of Austin, Texas, this the 5th day of August, A. D. 1911.

"O. B. Colquitt, Governor of Texas.

"By the Governor:

"C. C. McDonald, Secretary of State."

On August 7th the committee to which was referred the above first copied resolution reported a substitute therefor, as follows:

"The Speaker laid before the House, for consideration at this time, House Concurrent Resolution No. 1, requesting the Governor to submit certain subjects for legislation at the present called session. The resolution, together with the following substitute offered by the committee, was read to the House:

"Resolved by the House of Representatives, the Senate concurring, that it is the sense of this Legislature that his excellency, Governor O. B. Colquitt, should submit for the consideration of the Legislature the enactment of the following laws:

"1. An amendment to the election laws so as to more efficiently provide against the illegal payment of poll taxes and to enact such further laws as may be necessary to prevent, detect and punish fraud and preserve the purity of the ballot box.

"2. Limiting the number of saloons, or retail liquor establishments to not more than one for every fifteen hundred inhabitants, or any fraction thereof over twelve hundred in any incorporated town, city or county, provided that the same ratio shall also apply in unincorporated towns and villages.

"3. Fixing a uniform license fee of not less than $750 and not exceeding $1,000 annually on all retail liquor dealers.

"4. Limiting the hours of the sale of intoxicating liquors from 6 o'clock a. m. until 7 o'clock p. m., and from Saturday, 7 o'clock p. m. until 6 o'clock a. m. the following Monday.

"5. Making it a condition in the license for the sale of liquor that the licensee shall not contribute any money or thing of value to any campaign fund, or to secure the election or defeat of any candidate or measure in any election in this state, or to handle or pay out any moneys or thing of value for such purposes, and providing for adequate penalties and forfeitures for any violation thereof.

"6. Prohibiting the sale of liquor in this state except in unbroken packages and prohibiting the same from being drunk on or about the premises where sold.

"7. Be it further resolved, that we will promptly give consideration to the subjects heretofore submitted and pass upon the same with such expedition consistent with efficient service, to the end that the laws hereinabove set forth may also be considered within the limitations of this special session; and be it further

"Resolved, that this Legislature most courteously request the submission of the laws as above set forth, believing that the great majority of the people of the state favor such submission, and that this Legislature will enact such laws within the limitations as herein specified."

And the House on the same day adopted it. Journal, 72. Substantially the same, if not this identical, resolution was adopted by the Senate on August 3d. Senate Journal, pp. 42 to 45.

These resolutions were, it seems, at once presented to the Governor. On August 9th he sent this message to the House:

"Executive Office.

"Austin, Texas, Aug. 9, 1911.

"To the House of Representatives:

"House Concurrent Resolution No. 1, expressing the sense of the Legislature that certain subjects named therein be submitted by the Governor for consideration, is herewith returned.

"The Constitution (article 4, § 15) reads as follows: 'Sec. 15. Every order, resolution or vote to which the concurrence of both houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect shall be approved by him; or, being disapproved, shall be repassed by

both houses; and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.'

"The present Legislature was convened for the purpose of passing an appropriation bill and for the reapportionment of the state into senatorial and legislative districts, and subsequently the questions repealing the automatic tax law, and the fixing of an ad valorem tax rate for general revenue purposes, and for state school purposes, have been submitted by the executive for the Legislature's consideration and action. *When the appropriation bill is passed the Governor will consider the advisability of submitting additional questions for the consideration of the Legislature.*

"Respectfully,

"O. B. Colquitt, Governor of Texas."

(Italics mine.) Journal, 142.

Under the circumstances, I consider the Legislature had, from this and the other messages of the Governor above copied, his implied indication, if not promise, that he would yet submit to the Legislature the said subjects for legislation they petitioned him to submit. *There is not in the journals anywhere any message or other declaration or statement by the Governor to the House, or any one else, that he would decline or refuse to submit to the Legislature the said subjects for legislation which they had petitioned him to submit. I, therefore, think I am fully justified in stating the Governor did not notify the House he would decline, nor did he decline, to submit to the Legislature the subjects, or any of them, for legislation which they had petitioned him to submit.* From time to time during this special session the Governor did submit to the Legislature a large number of other subjects—more than 60 in all—for legislation, and did this until within 4 days of the 30 days the Legislature could remain in session at this special session, and even after Mr. Wolters was adjudged in contempt and ordered punished therefor. Under the Constitution he had the power and authority to immediately reconvene the Legislature for another special session, and to do so again and again, at his discretion. This had been done by his immediate predecessor.

As soon as this investigating committee was appointed it began its work for the House, as it was required by said action of the House. On August 23d this investigating committee made this report to the House, and the House then took the action shown hereby:

"Report of Investigating Committee.—Mr. Nickels, of Hill, chairman, submitted the following report of the committee to investigate the recent prohibition amendment election, which was read to the House:

"Committee Room of the House Investigating Committee.

"August 22, A. D. 1911.

"To the Hon. Sam Rayburn, Speaker of the House of Representatives of the Thirty-Second Legislature—Sir:

"Your committee, heretofore appointed pursuant to a resolution adopted by the House of Representatives on the 5th day of August, A. D. 1911, for the purpose of investigating certain matters set forth in said resolution, and acting under authority of said resolution, after having organized as the House Investigating Committee, and after having elected the Honorable Luther Nickels chairman of this committee, and the Honorable H. B. Savage secretary, did, on the 17th day of August, A. D. 1911, issue process for the Honorable J. F. Wolters in due and legal form, which was legally served upon the said witness, commanding him to appear before the House Investigating Committee of the House of Representatives of the First Called Session of the Thirty-Second Legislature, now in session in Travis county, Texas, and then and there to testify relative to such matters as are under investigation by said committee.

"That afterwards, on the 17th day of August, A. D. 1911, the said witness, the Honorable J. F. Wolters, in obedience to said subpœna, did appear before the House Investigating Committee in session and was sworn as a witness by the chairman of the committee, and proceeded to testify as a witness before said committee. Upon first taking the witness stand, Mr. Wolters asked permission of the committee to read from a manuscript several pages of typewritten matter as his testimony before the committee. Permission was given him to read from said manuscript, which he proceeded to do, after which he was examined by C. M. Cureton, one of the members of this committee, who had been appointed heretofore by the chairman, upon resolution of the committee, to assist in the conduct of the examination of all witnesses.

"In the course of his examination by Mr. Cureton, the said witness was asked the following relevant and pertinent questions, upon which the said witness, J. F. Wolters, declined to answer, and which he still refuses and declines to answer. The witness, Wolters, after having testified that, at the convention which met at Houston on October 12, 1908, he was selected as chairman of the anti state-wide organization of the state, and after having testified in substance that he proceeded to organize the state for the campaign, and after having testified that certain funds had been raised for the purpose of perfecting such organization of the state, and after having testified that he tried to send men to every county in the state to perfect the organization of which he was state chairman, he was asked the following questions:

'Q. Now, these gentlemen who perfected these organizations for you, I suppose you were compelled to pay them their expenses and something for their time in perfecting the organization?' Then followed the following questions and answers relating to this matter: 'A. Well, in order to keep the record straight, I will right there decline to answer on the ground that the committee has not the authority to ask that. Q. Well, then, Mr. Wolters, I will take and put the question to you directly, so as to keep the record in proper legal form. A. I want it understood the only reason I am declining to answer is because I do not think the committee has the constitutional authority. Q. All right; please state whether or not these several gentlemen which you had perfecting the county organizations, as has been heretofore described in your testimony, were paid their expenses and anything for their time and services while they were doing this class of work. The Chairman: Do you decline to answer? A. I decline to answer, on the ground that I do not think it is within the constitutional authority of this committee to ask that question and require an answer to it. Q. Following up this question, on this line of investigation, Mr. Wolters, I will ask you to state the names of these gentlemen that were doing this work for you, to which I referred in the previous question? A. Not believing that the committee has authority to ask that question, and demand an answer, I decline to answer it. Q. I will ask you, Mr. Wolters, if it is not a fact that these gentlemen were paid their actual expenses and a fixed and agreed salary for the services which they performed? A. For the same reason heretofore given, I decline to answer.' The aforesaid questions were each and all pertinent and material to the question of the inquiry before the committee; but the said witness, J. F. Wolters, knowingly and willfully refused to answer the same.

"The witness, J. F. Wolters, having testified that he was chairman of the anti-prohibition campaign in the recent campaign, and that he undertook to organize the state for such purpose, was asked the following questions and made the following answers declining to answer the questions: 'Q. In organizing the state, did you have in your employ any member of the House of Representatives or the Legislature? A. I will decline to answer that question. I don't think the committee has got any authority to investigate that. Q. In perfecting your organization and carrying on the campaign, did you make any effort to get those who were opposed to prohibition or submission to run for the Thirty-Second Legislature as against those who were in favor of prohibition or submission? A. I decline to answer that question, because it is not in the province of the committee to inquire into that. Q. I will ask you this question, Mr. Wolters: During the campaign just ended, at any time during the campaign, did you have in your employ, or were you paying any funds or compensation, to the Honorable Jeff Cox, a member of the House of Representatives of the Thirty-First and Thirty-Second Legislatures? A. I decline to answer that question, because I don't think it is the province of the committee to ask it or to require an answer. Q. Did Mr. Cox make any speeches under your direction, or your committee, or under the charge, that is, under the direction of any one in charge of the work being done by you during the campaign, for which he received either his actual expenses or for which he received a compensation in addition to his actual expenses? A. I decline to answer that question for the same reasons as heretofore stated. Q. At any time during the campaign just ended and since Mr. Stevens was sworn in as a member of the Thirty-Second Legislature, was he in your employ as head of the anti-prohibition organization during the fight doing work of a political nature, such as visiting the state of Oklahoma and investigating the conditions there relative to the liquor business in that state? A. I decline to answer that question, because I do not think it is within the authority of the committee to ask it. If these members had been employed that way, it would have been perfectly legal; but I decline, deny the right of the committee to inquire into the management of this campaign—deny the right of the committee to inquire into the management of this campaign. Q. Continuing the question relative to Mr. Stevens, did he receive any money or compensation or thing of value, either as expenses or as compensation for his services, for performing any of the duties or any work heretofore referred to relative to visiting Oklahoma and the publication of the result of the investigation there? A. I decline to answer that question, for the same reasons as heretofore stated. Q. Did you ever have any conversation with him (Representative Stevens), either during the session of the Thirty-First Legislature or afterwards, and prior to July 22d of this year? A. Many of them. Q. In any of these conversations did you make any offer to him to induce him to go to Oklahoma and make the investigation referred to, or to offer him employment of any character with the anti state-wide organization? A. I decline to answer that question. Q. Did you ever have any conversation relative to employment in a political way in the campaign just past? A. I decline to answer that question. Q. Did you ever pay him (meaning Representative Stevens) anything for making speeches in the campaign just past, the speeches he made being made between the time he was sworn in as a member of the Legislature and July 22d of this year? A. I decline to answer that question, for the same reasons heretofore given. Q. Colonel Wolters, at any time

after you took the position as chairman of the anti-prohibition organization, which is to say, at any time after October 12, 1908, and prior to the time when Mr. Stevens was sworn in as a member of the Legislature, was he in your employ as chairman of the anti-prohibition organization in any capacity? A. I decline to answer that question, for the same reasons heretofore stated. Q. Did Mr. Stevens work for you in the capacity heretofore referred to as an organizer in any of the counties of the state? A. I decline to answer that question, for the same reasons heretofore stated. Q. Did he, or not, while working for you, receive his expenses and compensation for his labor? A. I decline to answer that question. Q. I will ask you if at any time after October 12, 1908, when you became chairman of the anti-prohibition forces, and prior to the date on which Mr. Stone was sworn in as a member of the Legislature, whether he was in your employ as organizer or otherwise for the anti-prohibition forces for the state? A. I decline to answer that question, for the same reasons heretofore given. Q. And did Mr. Stone, as such organizer, receive his expenses and any compensation for services as such organizer? A. I decline to answer. Q. Or did he receive compensation for any work or labor done by him for your organization between the dates mentioned? A. I decline to answer that question. Q. After Mr. Stone was sworn in as a member of the Legislature, and prior to July 22d of this year, did he make any speeches or perform any other work for your organization for which he was paid any compensation whatever? A. I decline to answer that question. Q. If he made any speeches, and did not receive payment for making the speeches or doing other work, were his expenses paid for making the speeches, or for or in the performance of such work as he did do? A. I decline to answer that question, like I will relating to that campaign, its management, or its work. Q. Did Mr. Kennedy (referred to Representative A. M. Kennedy) do any work for your organization during the campaign for which he received any compensation? A. I decline to answer that question. Q. If he did any work of any character, did he receive his expenses while doing so? A. I decline to answer that question. Q. I noticed some time during the campaign quite a lengthy article in the newspapers, attributed to Mr. Kennedy, and I presume prepared and written by him, on conditions in Tennessee relative to the liquor business. I will ask you if you or your organization, or any one for you, paid him anything for the preparation of this article? A. I decline to answer that question. Q. I will ask you if Mr. Kennedy made a trip to Tennessee, or performed any other character of service, during the campaign, for which you paid him any compensation of any kind or character? A. I decline to answer that question. Q. Did you or your organization, or any one under you, pay his expenses while visiting Tennessee, or traveling for you, or doing any other labor in any capacity? A. I decline to answer that question.' That each and all of the foregoing questions were pertinent and material to the question of inquiry before the committee; but the said J. F. Wolters knowingly and willfully refused to answer the same.

"The said witness also declined and refused to answer certain other questions, as follows: 'Q. Col. Wolters, do you know or could you state, either correctly or approximately, the amount which you did expend for campaign purposes in the campaign just closed? A. I decline to answer that question, for the reasons heretofore stated.'

"The witness was testifying with reference to campaign expenses when he was asked the question and made the answer as follows: 'Q. Well, you will go this far in your answer, and state the character of expenses made by you in a general way? A. No, sir; I decline to answer that question, I want to keep the record straight. Q. Will you state, Col. Wolters, approximately, or as near as you can now recollect, the amount of money paid out by you for speakers, either as salaries or as expenses? A. I decline to answer that question for the reasons heretofore given.'

"The witness, continuing his testimony, and having testified that Senator Watson assisted him in the management of North Texas headquarters of his campaign, and having testified that Senator Watson was a man of limited means, and that his expenses were paid, he was then asked the following questions: 'Q. Was he, or not, paid anything in the way of money or other compensation for services in addition to his expenses?' A. I decline to answer that question.'

"The witness, having testified that he was acquainted with Col. Otto Wahrmund, a member of the House of Representatives from Bexar county, was asked the following questions: 'Q. Do you know whether or not Col. Wahrmund contributed anything to your campaign fund? A. I decline to answer that question. Q. As a private citizen? A. I understand the question to be a citizen, as an individual. Q. As a citizen? A. Yes, sir; I decline to answer that question, for the reason I don't think it is within the authority of this committee to inquire as to who contributed to the campaign fund. Q. I will ask you whether or not any one in this state who owns stock in a brewery corporation, or any other corporation engaged in the manufacture and sale of beer or other intoxicating liquors, contributed anything to your campaign fund, or the campaign fund of any other organization in the state? A. I decline to answer that question for the reasons heretofore stated. Q. Did any individual who was engaged in the manufacture of beer, or in the storage or distribution of beer,

within this state, contribute any money or other thing of value to the campaign fund about which I have been inquiring? A. I decline to answer that question, just like I have declined or would decline with any man in the banking business or the mercantile business. Q. Well, in order to make the question entirely clear, I will separate it, and re-ask a part of it. Col. Wolters, did any individual or partnership without the boundaries of this state, engaged in the manufacture or sale or distribution of intoxicating liquors of any character, contribute to the campaign fund, the distribution of which was in your hands? A. Please read that question again. I was a little absent-minded. Q. Read the question to him, Mr. Stenographer. (Stenographer reads the question.) A. I decline to answer that question. Q. Did any of the lodges of the state—the great organization lodges of the state—did they contribute anything so far as you remember? A. Do you mean the secret orders? Q. Yes; the secret orders. A. The fraternal orders? Q. Yes, sir; the fraternal orders. A. I will decline to answer that question. Q. Well, did any of the commercial clubs or boards of trade of the cities and towns of the state contribute anything to your campaign fund? A. I will decline to answer that question, too. Q. I will ask you, Col. Wolters, what was the largest campaign contribution made to your organization campaign fund by any individual? A. I will decline to answer that question. Q. I will ask you if such individual was a resident of this state, or did he reside without the boundaries of the state? A. I will decline to answer that question. Q. I do not recall whether I have asked you this question or not: Can you state approximately or accurately, and will you state, the total amount of money received by you as campaign contributions for the recent campaign? A. I decline to answer that question.'

"The witness, having testified as to the expenses incurred by him in printing and mailing out a certain line of his campaign literature known as 'Facts,' was then asked the following question: 'Q. Will you state the amount of expense incurred in preparing, mailing, and distributing the campaign matter other than "Facts"? A. No, sir; I will decline to state that.'

"The witness, having testified that Representative Heilig, a member of the Thirty-Second Legislature, had been assisting him in the publicity department of his campaign office at Houston during a good part of the campaign, and having testified that the expenses of Mr. Heilig were paid by his campaign committee, was then asked the following question: 'Q. Did he (referring to Representative Heilig) receive any funds or compensation other than his expenses? A. I decline to answer that question.'

"The witness, having also testified that the Honorable Bob Barker, chief clerk of this House, assisted him in the recent campaign at the Dallas office, and having testified that Chief Clerk Barker made a trip for him in the campaign to Tennessee, and having testified that Mr. Barker's expenses were paid, was then asked the following question: 'Q. Did he receive any compensation in addition to these expenses? A. I decline to answer that question. I think he told you himself.'

"All of which said foregoing questions were pertinent and material to the question of inquiry before the committee; but the said witness, Wolters, knowingly and willfully refused to answer the same or any of them.

"That in the course of the examination of the witness, Wolters, and after he testified that he was chairman of the Anti-Prohibition executive committee during the campaign of 1911, and after the witness had testified that he knew, by hearsay, of an organization called the 'Texas Brewers Association,' of which Mr. B. Adoue is treasurer, and after he had been shown what purports to be a copy of a letter dated at Galveston, Texas, in 1911, and which is signed, 'Texas Brewers Association, B. Adoue, Chairman,' calling upon certain parties to donate funds for the purpose of preventing the adoption of the constitutional amendment voted on July 22d, the following questions were asked Mr. Wolters: 'Q. Mr. Adoue, during 1911, did he make any remittance to you of any funds, or money to your campaign fund?' To which question the witness made the following answer: 'A. I decline to answer that question.' That said question was pertinent and material to the question of inquiry before this committee, and the said witness, J. F. Wolters, knowingly and willfully refused to answer the same.

"That afterwards, while the said witness, J. F. Wolters, was still upon the witness stand, he was asked the following questions, which he declined to answer as shown, to wit: 'Q. Did you receive any funds or remittances as a campaign contribution from Mr. Otto Koehler, president of the San Antonio Brewing Association? A. Do you mean from him individually? Q. Yes, sir; from him individually. A. I decline to answer that question. Q. Did you receive any remittance or campaign contribution from Mr. H. Hamilton, president of the Houston Ice & Brewing Company? A. I decline to answer that question. Q. Did you receive any remittance from Mr. S. T. Morgan, president of the Dallas Brewery, as contribution to your campaign fund? A. I decline to answer that question. Q. Did you receive any remittance as a campaign contribution from Mr. H. Bruhn, manager of the Lone Star Brewery? A. I decline to answer that question. Q. Did you receive any remittance as a campaign contribution from Mr. Zane Cetti of the Texas Brewing Association? A. I decline to answer that question. Q. Will you state, Col. Wolters, that none of these individuals, as

individuals, whose names I have just called your attention to, did not contribute to the campaign fund? A. I shall decline to answer that question.' That each of the foregoing questions were pertinent and material to the question of inquiry before the committee, and the said witness, J. F. Wolters, knowingly and willfully refused to answer same.

"The said witness, in continuing his testimony, stated that he was acquainted with Mr. Warnken, of the firm of Kennerly & Warnken, of Houston, whose office is in the Scanlan Building in that city, and, after having testified that Mr. Warnken was a Republican, he was asked the following questions: 'Q. Well, during the campaign just closed, was Mr. Warnken in your employ, performing any character of service for you? A. I will decline to answer that question, for the reason heretofore stated. Q. During the campaign, did he, or not, visit various counties in the state for the purpose of lining up the local Republicans and the Republican organizations against the state-wide amendment that was to be voted on on July 22d? A. I will decline to answer that question, for the reasons heretofore stated. Q. If he did make such visit and do such character of work, is it not true that he was doing so for you or your organization? A. I decline to answer that question, for the same reasons heretofore stated. Q. And is it not true that if that work was service, if performed by him, that for this work or service, if performed by him, he was receiving his expenses from your organization? A. I decline to answer that question. Q. Is it not also true that character of service, if he did do so, that in addition to his expenses he was paid a salary or other compensation by your organization for so doing? A. I decline to answer that question, for the reasons heretofore stated. Q. I will ask you, Col. Wolters, if it is not a fact that Mr. Warnken did make a report to you on Coryell county Republicans, the same as appears in this document which I have submitted to you? (Prior to asking the question a typewritten document had been submitted to Col. Wolters which purported to be, on its face, a report as to the attitude of the Republicans in Coryell county.) A. I decline to answer that question. I don't think it is within the scope and authority of this committee to inquire into that. Q. Well, paraphrasing the question suggested by Mr. Hunt a moment ago, I will ask you to state to the committee that you did not receive such a report from Mr. Warnken. A. I will decline to answer that question also.'

"This witness, in continuing his testimony, stated that he had reports coming in from precincts and counties over the state somewhat similar to the one shown him, and he was then asked this question: 'Q. Well, did Mr. Warnken make any of these reports to which you refer? A. I decline to answer that question.'

"The witness, after having testified that he had a number of men traveling over the state making reports of the political conditions in the various counties in the state, said number ranging from 6 or 7 to 15, he was asked the following question: 'Q. I will ask you to give the names, if you now remember, whom you employed in that capacity. A. I will decline to answer that question.'

"That each and all of the foregoing questions were pertinent and material to the questions of inquiry before the committee, and the said witness, J. F. Wolters, knowingly and willfully refused to answer the same.

"The witness was then asked the following questions: 'Q. I will now ask you to state to this committee the amount of the campaign contributions received by you during the recent campaign which ended July 22d. A. For reasons heretofore stated, that the committee has not the power and authority to ask that question, nor to receive an answer thereto, I decline to answer that question. Q. In the light of the Democratic platform and the utterances contained in the Democratic campaign book, and in the light of the suggestions made by this text-writer tending toward publicity—not indorsing or asking you to indorse the published methods—but in the light of these methods which I have suggested, I will now ask you to state to this committee the amount of campaign contributions received by you during the recent campaign which ended on July 22d? A. For reasons heretofore stated, that the committee has not the power and authority to ask that question, nor to require an answer thereto, I decline to answer that question. Q. In your written testimony, read to the committee at the beginning of your examination, you state the following: "In conducting the campaign, neither I nor any one acting under my direction or with my knowledge, violated any laws, statutory or moral, and did only those things which are perfectly legitimate in accordance with law and good morals. Every dollar contributed and collected was spent lawfully. No voter or official was corrupted or sought to be corrupted." That statement made by you would come within the rule, as I understand it, sometimes invoked in the courts and called a short rendition of facts, and, if I understand the laws of evidence correctly, that character of evidence is admissible in a legal trial only when from some cause beyond the ability of the witness to avoid he cannot give the facts in greater detail, or which is not susceptible of a more detailed statement. It would appear that in your instance the details of this fact which you have thus rendered in a short way can be given, and I will therefore ask you to state how you spent

the money contributed and collected by you in this campaign. A. I decline to answer that question, for the reasons heretofore given. Q. I will ask you, Mr. Wolters, to give the committee the names of all persons, firms, or corporations which you paid any money to during the campaign, and to state for what service or material you made such payment. A. For the reasons heretofore given, I decline to answer that question. Q. Please state the amount you paid out for office help at your Houston office. A. For the reasons heretofore given, I decline to answer that question. Q. Please state the amount you paid out for office help at your Dallas office. A. For the same reasons, I decline to answer that question. Q. Please state the amount you paid out for advertising in the newspapers, and the names and amount of the papers to whom such money was paid for advertising. A. For the same reasons heretofore given, I decline to answer that question. Q. Please state the amount of money you paid out in this campaign as expense money to speakers who were speaking for you or under your direction in the recent campaign. A. For the same reasons heretofore given, I decline to answer that question. Q. Please state the amount of money you paid out to speakers who were speaking for you or under your direction during the recent campaign, which was paid to them as compensation, or paid to them for other purposes than expenses. A. For the same reasons I decline to answer that question. Q. Please state the amount you paid out for publishing and distributing literature or campaign documents during the recent campaign, and to whom you paid such funds. A. For the same reasons, I decline to answer that question. Q. I will separate the question. I probably should have asked it in two to begin with. Please state the amount of money you paid out for publishing and distributing campaign literature or documents during the campaign just closed. A. I decline to answer that question for the same reasons heretofore stated. Q. Please state the amount of money paid out by you in payment of the expenses of organizers who assisted you in the organization of the state at any time during the recent campaign. A. For the same reasons heretofore given, I decline to answer that question. Q. Please state the amount of money you paid out as expense money for such organizers during the recent campaign. A. I decline to answer that question, for the same reasons heretofore given. Q. Please state the amount of money paid out by you in any other manner than I have heretofore named as expenses in the recent campaign just closed. A. For the reasons heretofore given, I decline to answer that question. Q. I will ask, Mr. Wolters, if you kept, caused to be kept, or if any one kept for you, or under your direction, an account of the receipts in the way of campaign contributions. A. I decline to answer that question, for the same reasons heretofore given. Q. Please state if you kept, caused to be kept, or any one kept for you, or under your direction, an account or books of the expenditures made and incurred and paid by you in behalf of you or your committee during the recent campaign. A. For the same reason heretofore given, I decline to answer that question. Q. It has been stated about the Capitol here, from what source I do not know and have no information, but I have heard, that the books containing the account of your recent campaign have, since the campaign, been burned or destroyed. Please state whether or not this rumor is a true one or a correct one. A. For the reasons heretofore given, I decline to answer that question. Q. On behalf of the committee, I will request you, Mr. Wolters, to submit to the committee an itemized statement of your receipts and disbursements during the last campaign. I refer, of course, to the campaign receipts and campaign disbursements. A. With all due respect to the committee, I will decline to undertake to do so. Q. I will ask you if you have, either here or at your office, or at any other place, books, vouchers, checks, drafts, receipts, records, memorandums, or other evidence of receipts and disbursements, from which could be compiled a record of your receipts and disbursements, or a record of either? A. I decline to answer that question, for the same reason heretofore given. Q. If you have the documents, books, papers, records, checks, drafts, vouchers, memorandums, and such instruments as I have heretofore named, in your possession, or within your charge, or subject to your possession, will you place those documents before this committee, or a subcommittee appointed by it, for inspection and examination, in order that this committee may compile therefrom a record of your receipts and disbursements during the recent campaign? A. I shall decline to answer that question for the same reason heretofore given.' That each and all of the foregoing questions were pertinent and material to the inquiry before the committee, but the said witness, J. F. Wolters, knowingly and willfully refused to answer the same.

"That afterwards, while the said witness was being examined by Hon. W. T. Bagby, a member of this committee, and who had heretofore been appointed to assist in the conduct of the examination of witnesses, the said witness was asked the following questions, after he had testified that contributions were made to his campaign fund by bankers in the state:' Q. Would you decline to give his name? A. I would. Q. Do you decline to inform this committee the names of those bankers? A. I do. Q. I want to know if any preachers made any contribution to your campaign fund within your knowledge.

A. Not that I know of in the way of funds. Some preachers assisted us by writing articles that were used. Q. I want to know if any farmers in Texas contributed to the Anti-Prohibition campaign fund? A. Yes, sir. Q. Do you decline, for the reasons heretofore stated, to give the names of those farmers? A. I do. Q. Merchants, or anybody else, as I understand your answer to mean? A. I decline to give the name of any person who contributed to this campaign fund, because I do not think it is pertinent or material to the inquiry that the committee is conducting, and that it has not got the authority under the Constitution to inquire into that and require me to answer.' That the said foregoing questions were pertinent and material to the question of the inquiry before the committee, but the said witness, Wolters, knowingly and willfully refused to answer the same or any of them. That said questions were all asked the said witness while the House Investigating Committee was in session, and while the witness was legally before it and duly sworn to testify as a witness, and that the said witness knowingly and willfully declined and refused to answer the said questions; that the questions were all pertinent and relevant to the matters under investigation by this committee.

"That afterwards, on the 22d day of August, A. D. 1911, your committee, by resolution, a certified copy of which is herewith attached and marked 'Exhibit A,' resolved that such failure and refusal of the witness to answer said questions was in contempt of this committee, and that the same was and is an obstruction of the lawful proceedings of the House of Representatives of the Thirty-Second Legislature, and of the lawful proceedings of this committee, and was and is in contempt of the House of Representatives of the Thirty-Second Legislature; and also resolved that these facts, together with the questions asked the said witness and which he declined to answer, be certified by this committee, through its chairman and secretary, to the House of Representatives of the Thirty-Second Legislature for such action and punishment as the House of Representatives may decree.

"Therefore, in accordance with the resolution adopted by this committee, the facts relative to said witness are herewith reported to the House of Representatives with the recommendation that the said witness, J. F. Wolters, be adjudged to be in contempt of the House of Representatives of the Thirty-Second Legislature, and of the lawful proceedings of a lawful committee of the House of Representatives of the Thirty-Second Legislature, and that his conduct in the premises was and is in contempt of this committee and in contempt of the House of Representatives; and we recommend that such witness be required to purge himself of such contempt by appearing before this committee and answering each and all of such questions so lawfully propounded to him, and that he be punished in such manner and to such extent as the House of Representatives may adjudge and be within the lawful power and authority of the House of Representatives.

"Luther Nickels,
"Chairman of the House Investigating Committee.

"H. B. Savage,
"Secretary of the House Investigating Committee.

"Whereas, on the 17th day of August, A. D. 1911, J. F. Wolters, of Harris county, Texas, in obedience to a subpœna duly and legally issued by this committee, appeared as a witness before the House Investigating Committee, and during his examination by the members of said committee declined and refused to answer certain lawful and proper questions propounded to him by the members of such committee: Therefore be it

"Resolved, by the House Investigating Committee, that such disobedience is in contempt of this committee, and that the same is an obstruction of the lawful proceedings of the House of Representatives of the Thirty-Second Legislature and of the lawful proceedings of this committee, and is in contempt of the House of Representatives of the Thirty-Second Legislature, and that these facts, together with the questions asked the said witness and which he declined to answer, shall be certified by this committee through its chairman and secretary to the House of Representatives of the Thirty-Second Legislature for such action and punishment as the House of Representatives may decree.

"I hereby certify the above and foregoing is a true and correct copy of the resolution passed by the House Investigating Committee at its session held on the 22d day of August, 1911, as the same appears of record upon the minutes of said committee.

"H. B. Savage,
"Secretary of the House Investigating Committee."

Journal, 378–387.

Thereupon on said date members of the House offered this resolution in the House:

After reciting that said Investigating Committee had made to the House the above report, copying it in full again as just above:

"And whereas, it appears from said report that one J. F. Wolters, of Harris county, Texas, was lawfully and legally summoned to appear as a witness before the House Investigating Committee, and in compliance with said subpœna did so appear, and after being sworn and while testifying, said witness did willfully decline and refuse to answer certain questions propounded to him by said committee and under its direction, all of which said questions are shown hereto-

fore in this resolution, in the report of said House Investigating Committee to the House of Representatives; and

"Whereas, it appears to the House of Representatives that each and all of said questions were pertinent and material to the question of inquiry before the House Investigating Committee; and

"Whereas, it appears to the House of Representatives that such failure and refusal on the part of said J. F. Wolters to answer each and all of said questions was and is an obstruction of the lawful proceedings of the House of Representatives, and of the lawful proceedings of a lawful committee of the House of Representatives: Therefore, be it

"Resolved, by the House of Representatives of the Thirty-Second Legislature of the state of Texas, in session at the first called session thereof, in the city of Austin, Texas:

"First. That the said J. F. Wolters, the witness aforesaid, be and he is hereby held and adjudged to be guilty of contempt of the House of Representatives, and of obstructing the lawful proceedings of a lawful committee of the House of Representatives.

"Second. That the said J. F. Wolters be cited to appear at the bar of the House of Representatives at 2 o'clock p. m. on the 24th day of August, A. D. 1911, then and there to show cause, if any he has, why the aforesaid adjudication of contempt against him should not be made final, and why he should not be held and adjudged in contempt of the House of Representatives and punished therefor as required and permitted by law.

"Third. That the chief clerk of the House of Representatives and the Speaker thereof be, and they are hereby, ordered and directed to issue citation and notice to the said J. F. Wolters, whose place of residence is in Harris county, Texas, but who may be found in Travis county, Texas, to appear at the time and place and for the purpose aforesaid.

"Fourth. That said citation and notice aforesaid shall contain a copy of this resolution.

"Fifth. That the service of said citation and notice may be made by the sergeant at arms or any assistant sergeant at arms of the House of Representatives, or any officer authorized by law to serve notices and citations of this character by delivering to said J. F. Wolters, in person, a true copy thereof.

"Offered and signed by Nickels of Hill, Brown, Hunt, Nichols of Hunt, Savage, Rowell, Cureton, Williams of McLennan, Bagby."

The Journal of the House of August 24th then shows that the Speaker announced and the House took up and considered this matter, again copying the report of said committee, and the action of the House thereon above shown in full again; that the said Mr. Wolters appeared before the bar of the House in open session, and, being called upon to show cause why he should not be adjudged in contempt and punished therefor in willfully failing and refusing to answer said questions to him, then presented and read this his answer:

"To the Honorable the House of Representatives of the Thirty-Second Legislature of the State of Texas, Now in Special Session; and to the Honorable Sam Rayburn, Speaker of said House of Representatives:

"Comes now the respondent, J. F. Wolters, in obedience to the citation served upon him on this the 23d day of August, A. D. 1911, commanding him, among other things, to appear and show cause why he should not be held in contempt of this House and of your special investigating committee, for declining to answer questions submitted to him and interrogatories propounded to him by your committee, as set forth in its report to this House, filed on the 22d day of August, 1911, a copy of which so served upon him is hereto attached, and marked 'Exhibit A,' and made a part hereof. Your respondent says:

"1. That at the time when he learned of the fact of the appointment of your committee under the resolution by virtue of which they are acting he was in the state of New York, United States of America; that for many weeks prior to the day of the recent prohibition election, which took place on the 22d day of July 1911, he had engaged passage on the steamer Antilles for himself and wife to go from the city of New Orleans by water to the city of New York; that before this special session of the Legislature convened, and therefore before the resolution under which said committee is acting, and before said committee was appointed, he had left the state of Texas in the manner above indicated in company with his wife for the purpose of spending 40 or 60 days in the North; that he left this state on the 28th of July, 1911; that after the resolution aforesaid had been passed by this honorable House, and after the committee aforesaid had been raised, your respondent was advised of these facts, and that his testimony was desired before said committee, and although he was beyond the reach of process of said committee, and beyond the reach of process of this House, and no process had been or could have been served upon him, compelling him to return to this city and state to testify before said committee, he voluntarily returned to the state, coming directly from New York to Austin in order to appear before said committee and to answer any legal, constitutional, and proper question or any question which said committee might propound about anything which he had any doubt of its right to inquire about; that soon after his arrival in the city of Austin, on

the 17th day of August, 1911, an ordinary subpœna was served upon him, issued by the chairman of your said committee, commanding his presence before it to testify; that he immediately, and within a few hours after reaching this city, responded to said subpœna and reported to the secretary of said committee his appearance and his readiness to testify upon proper and legal questions; that he did appear when desired by said committee, and submitted to being sworn as a witness to testify before it; that he submitted to said committee a written statement prepared by him, which set forth, as he believes, all pertinent facts within his knowledge concerning all matters which said resolutions authorized said committee to investigate, which they have the right to investigate and to propound questions upon, under the Constitution of the state of Texas; that he, therefore, has shown by his conduct and acts, and now declares the fact to be, that he was not in contempt either of said committee or of this House, and had no purpose to be in contempt or to show contempt for either of them.

"2. Your respondent further says that it is a fact, so far as he remembers, that he declined to answer each and every one of the questions propounded to him by said committee as set forth in a copy of the report of said committee, made to this House and served upon him, which is attached hereto and called 'Exhibit A'; that he refused to do so because he believed, and still believes, this honorable House had not the authority or the power under the Constitution to appoint a committee and invest it with authority to make such inquiries and demand answers thereto of any citizen of the state of Texas, or of your respondent. He believes, and charges the fact to be, that such inquiries were not made and are not being insisted upon for any legitimate and lawful purpose; that the information attempted to be secured by each and all of said interrogatories was not intended, and is not intended, to assist the Legislature, or the House of Representatives thereof, in gaining any information for the purpose of assisting in legislation, or for the purpose of carrying out and putting in force any authority or power vested in, or duties imposed upon, the Legislature of Texas, but, on the contrary, believes that said inquiries were made and said information desired solely and only for political purposes, and intended to be used in behalf of one side of a political division of the people of Texas upon a question of adopting or not adopting a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors in this state, and that said inquiries were made about and concerning subjects which are private in their nature, which can serve no public purpose within the power of this Legislature to correct, and are without and beyond the jurisdiction of this House to inquire about, investigate, or act upon; that to have answered the questions propounded would have forced this respondent to have violated his duties and obligations to many people who contributed to the campaign fund accumulated to be used legitimately in an effort to defeat the adoption of a prohibition amendment, voted upon on the 22d day of July last, which he and those associated with him believed, if adopted, would be most seriously injurious to the people of Texas, and would have caused said contributors, who contributed in a lawful way as testified to by him, inconvenience, vexation, and loss of business, to unreasonable partisans located in their respective places of residence, and with whom and for whom they respectively transacted business, and would have violated the confidence which was reposed in him by many persons who contributed by their efforts and influence in assisting him in a lawful way in his committee opposing said amendment to defeat the adoption of same; and he respectfully declined to answer said interrogatories, and now stands upon his constitutional right and his individual obligation not to answer said impertinent, unlawful, and unconstitutional demands.

"3. Your respondent further says that it is his belief, and he so charges, that the resolution under which your said committee is acting was adopted and is attempted to be enforced in violation of the Constitution of the state of Texas, and that this honorable body has no authority under the Constitution to pass said resolution embodying the provisions thereof, and no authority under the Constitution to empower the committee, as has been attempted to be done, to make the investigation therein ordered, or to make the inquiries and elicit the testimony thereunder sought to be elicited from your respondent or any one else.

"4. Your respondent shows to this honorable body that if the resolution is held to be constitutional, and that the same has been lawfully passed, and that the committee thereunder has lawful authority to do as therein commanded, then by simple resolution as therein provided said committee is invested with the following powers and authorities:

"(a) 'All of the power necessary to carry out the full and complete terms of said resolution.' You will see by said expression of said resolution that no limit is placed upon the power of said committee, and that the human mind cannot conceive, under its provisions, of any class or character of coercion or force which might be used by said committee and its subordinates (selected by itself) which could not be exercised over citizens of this state and their property, uncontrolled by anything except the will and discretion of the members of said committee.

"(b) 'All of the authority conferred by law

under chapter 7 of the Acts of the Thirtieth Legislature.' Under the authority of said act this committee is given the power to issue process of its own creation, power to legislate and make process of its own type and character, to determine how it shall be executed and by whom it shall be executed, to compel the attendance of witnesses and the production of papers and property of citizens, including, of course, the right of search and seizure of the persons and property of the citizens of this state, and with express power to condemn any citizen who disobeys any of its orders, or evades its process, of being guilty of contempt of said committee, and to impose upon any such citizen a pecuniary fine of $100 and imprisonment for any length of time, limited by the duration of the then session of the Legislature, and many other powers in violation of the Constitution of the state of Texas.

"(c) In addition to the powers set forth in paragraphs (a) and (b), said resolution confers upon said committee, for disobedience of its demands, the power to adjudge such citizen guilty of contempt, and to bring him before the bar of this House for such contempt, there to be dealt with as the members of this House may deem necessary, without limitation or rstriction.

"5. Your respondent further says that your said committee, by and under the direction of said resolution, have undertaken and are undertaking to carry out and execute such unlawful authority, undertaken to be conferred by this House, upon your respondent and upon many other citizens of the state of Texas, in violation of the Constitution of this state.

"6. It will be observed that, if the powers sought to be conferred by the resolution have been conferred, said committee has greater power than any district court or other court has conferred upon it by the Constitution of this state. It will be observed that the resolution provides that all necessary expenses incurred by the members of the committee, including the necessary traveling expenses by the members of the committee, or incurred under its direction, in pursuance of said investigation, shall be paid out of the contingent expense fund of the House; that such committee shall elect its own chairman and such other officers as it may desire and establish, and make such rules for governing its own procedure and forms of process as may be permitted by law, thus giving it legislative power both to appropriate money and to create forms of process and methods of executing same; that it has legislative power to appropriate money without limit, and controlled only by its desire; that under it, if lawful, said committee can appoint one officer or a thousand, and summon one witness or a hundred thousand, and, if said authority is lawful, could bankrupt the state of Texas.

"7. Your respondent insists that said resolution is violative of the following provisions of the Constitution of the state of Texas, whose creature this Legislature is, namely:

"(a) Article 1, § 2, of the Constitution provides 'that all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit.' This provision is cited for the purpose of showing the inaccuracy of the oft-repeated statement that the Legislature has any inherent power. I contend that the Legislature and this House has no inherent power, that it must look to the Constitution of this state for all power by it possessed, and that the Constitution has conferred upon it by a section hereinafter quoted only legislative power and under proper constitutional restrictions, and therefore for this House to undertake to exercise inherent power, or to confer such power upon its committee, is in violation of the express terms of the Constitution.

"(b) Article 1, § 9, of the Constitution provides 'that the people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant to search any place or to seize any person or thing shall be used without describing them as near as may be, and only with probable cause supported by oath or affirmation.' Your respondent shows to you that, if the authority attempted to be conveyed by your resolution has been conferred, you have given to said committee without limitation all powers which it thinks necessary to carry out the provisions thereof, and the power to prescribe, manufacture, make, create, and cause to be executed any kind of process which it deems necessary and advisable, to enforce such power as it deems necessary or desirable; that such power might include, and in fact it is undertaking to enforce, the power of seizing the property, books, and papers and persons of individual citizens without any specific allegation of wrongdoing on their part, and without any oath or affirmation that any wrong has been done or attempted by them, or any of them; and that such resolution on that account is in violation of the Constitution and void.

"(c) Article 2, § 1, of the Constitution provides 'the powers of the government of the state of Texas shall be divided into three distinct departments, each of which shall be confined to a separate body of magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons being of one of these departments shall exercise any power properly attached to either of the others except in the instances herein expressly permitted.' Your respondent contends that the above is a clear declaration of our Constitution, separating these three great governmental functions, and declaring in so many words, and so plain that they cannot be misunderstood,

'that neither department shall exercise any of the powers of any other department, except in the instances therein expressly permitted,' and your respondent asserts that said resolution undertakes to confer upon your committee legislative power, judicial power, and executive power, and is therefore in violation of said provision of said Constitution and is void.

"(d) Article 3, § 1, of the Constitution provides: 'The legislative power of this state shall be vested in a Senate and House of Representatives, which together shall be styled the Legislature of the state of Texas.' By this provision your respondent contends that the Constitution confers upon the Legislature so composed all legislative power, and none other, except such other power as is expressly conferred by the Constitution itself, and that this power conferred upon the Legislature as a whole, consisting of the Senate and House of Representatives, cannot by the entire body be delegated to either branch thereof; nor can the entire body, or either branch thereof, delegate legislative power to a committee of either branch, or to a joint committee of both branches, as has been attempted to be done under the provisions of said resolution—i. e., the power to create process of its own liking, the power to execute the same in its own way, the power to adjudge people guilty of criminal conduct, the power to convict them, the power to enter judgments of conviction, and the power to execute the sentence of such judgment, and the power to appropriate and expend the money of the people in unlimited quantities. Your respondent shows to this honorable body that article 3 of said Constitution, by its various subsequent sections, sets out clearly and explicitly how and in what manner the Legislature is to exercise its legislative power, and that it cannot do so in any other manner must be apparent.

"(e) The Constitution (article 3, § 5) provides: 'The Legislature shall meet every two years at such times as may be provided by law and at other times when convened by the Governor.' Your respondent calls attention to the fact that the Legislature cannot meet for general legislative purposes except in regular sessions biennially at such times as is provided by law, and that at such regular terms only can it engage in general legislation. That under section 40 of said article No. 3 the Constitution provides: 'When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling said special session or presented to them by the Governor.' Your respondent calls attention to the fact that the present special session of this honorable House is a called session, made by the Governor, and is, therefore, controlled by said section 40 of the Constitution, and cannot legislate upon any subject except such as has been submitted to it by the Governor, and that the subject or subjects of amending or changing the present election laws, or of enacting new laws governing elections, has not been submitted, nor has the Governor submitted to this Legislature the subject of passing upon and creating laws to prevent the contributions of funds by individuals, associations, or corporations for campaign purposes, nor for the purpose of legislating to prevent conspiracies to corrupt the ballot box or influence elections, nor any other subject upon which the testimony sought to be elicited would give any light or information; that it is clear that there can be but two classes or kinds of sessions of the Legislature, one a regular session and the other a called session, as set forth in the two provisions of the Constitution just quoted. Your respondent further desires to call your attention to the fact that, if the resolution under which your committee is acting is contended to be legislation, then the Legislature has not passed it in accordance with the provisions of the Constitution, and, if it is not legislation, then it is an effort to do something, and to exercise power, which by the terms of the Constitution neither this House nor both Houses combined has the power to do.

"(f) Section 11 of article 3 of the Constitution provides 'that each house may determine the rules of its own proceedings, may punish members for disorderly conduct and with the consent of two-thirds, expel a member, but not a second time for the same offense'; and section 15 of article 3 provides 'that each house may punish by imprisonment during its session any person not a member for disrespectful or disorderly conduct in its presence or for obstructing any of its proceedings, provided such imprisonment shall not at any one time exceed forty-eight hours.' Your respondent respectfully shows to this honorable body that the last two quoted sections of said Constitution contain all of the power embraced in this Constitution by and under which this House may punish any person whomsoever, except in the case of impeachments of officials, and your respondent calls attention to the fact that he is not a member of the Legislature, and therefore not subject to the provisions of said section 11; that he has not been disrespectful, or been guilty of disorderly conduct in the presence of this House, nor has he in any manner obstructed any of its proceedings, and therefore he has not committed any act which by the terms of said Constitution empowers this House to try or condemn him, and he avers that the effort to do so is unconstitutional and void.

"(g) Article 3, § 44, of the Constitution provides: 'The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors not provided for in this Constitution, but shall not

employ any one in the name of the state unless authorized by pre-existing law.' Your respondent respectfully calls your attention to this provision of the Constitution, and to the provision of your resolution which undertakes to permit your committee to create officers, select officers, fix their salaries, and expend the public moneys of this state in the payment of said salaries and the payment of the expenses of your committee in unlimited quantities, in violation of said Constitution, and therefore your said resolution is unconstitutional and void.

"(h) Article 5, § 1, of the Constitution, as amended in 1891, provides: 'The judicial powers of this state shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in district courts, in county courts, commissioners' courts, in courts of justices of the peace and in such other courts as may be provided by law.' Your respondent respectfully calls attention to the fact that your resolution undertakes to confer high judicial powers of the greatest magnitude upon your committee over the persons and property of citizens of Texas, in violation of that provision of the Constitution; that this Legislature has no authority under the Constitution (but such authority is prohibited) to confer judicial powers upon committees of your House, or upon persons who are not judges of courts, or upon any executive officer, all of which the resolution seeks to do, and in addition your resolution undertakes to confer legislative power upon your committee, which under the Constitution cannot be done, and for these reasons, as well as the others, said resolution is unconstitutional and void.

"(i) Your respondent calls your attention to the fact that by this resolution you have undertaken to confer upon a committee of your own selection, of your own members, powers which the Legislature as a whole has not, and which neither branch thereof possesses, under the Constitution, and that this cannot be done. If it be conceded that both Houses acting concurrently, or either branch of the Legislature, can confer powers upon itself not granted by the Constitution, then there is no limit to the power which the Legislature may confer upon itself, and thus enable it to usurp all the powers of the government.

"8. This respondent further shows to this honorable House that in declining to answer the several questions referred to in its said resolution, and in each and all of his acts in the premises, he has acted under the advice of counsel learned in the law; that he has not obstructed nor intended to obstruct the proceedings of this House or its said committee, or in any manner whatsoever intended to be in contempt thereof; that in what he has done he had only asserted his right as a citizen under the Constitution, and resisted what he conceived to be unwarranted and unconstitutional efforts to assert authority over him as a sovereign citizen by your committee; and he prays and requests that by resolution of this House he be exonerated and acquitted from any wrongdoing or intentional wrongdoing in any of the acts committed by him, and that he be declared not to be in contempt of this House.

"J. F. Wolters, Respondent."

Journal, 483–489.

It is unnecessary to again copy "Exhibit A," referred to by Mr. Wolters, as it is the report of said committee, including the questions to him, and the action of the House thereon, exactly as above copied.

The journal of the House then fully shows that, upon the invitation of the Speaker, Mr. Wolters then addressed the House; that his attorneys, also, in his behalf and defense, addressed the House, and that Mr. Nickels, a member of the House, and Mr. W. D. Odell, also addressed the House in support of said charges against Mr. Wolters; that the House, while hearing these charges and the defense thereto, adjourned and reconvened from time to time until on August 25th, when the House, on motion of several members thereof, after again in a resolution reciting all of the proceedings of the House adopting said resolutions creating and approving said investigating committee in its action as aforesaid as to Mr. Wolters, and the proceedings of the House thereon shown above, adopted this motion:

"And whereas, it appears from said report that one J. F. Wolters, of Harris county, Texas, was lawfully and legally summoned to appear as a witness before the House Investigating Committee, and in compliance with said subpœna did so appear, and after being sworn and while testifying, said witness did willfully decline and refuse to answer certain questions propounded to him by said committee and under its direction, all of which said questions are shown heretofore in this resolution, in the report of said House Investigating Committee to the House of Representatives; and

"Whereas, it appears to the House of Representatives that each and all of said questions were pertinent and material to the question of inquiry before the House Investigating Committee; and

"Whereas, it appears to the House of Representatives that such failure and refusal on the part of said J. F. Wolters to answer each and all of said questions was and is an obstruction of the lawful proceedings of the House of Representatives, and of the lawful proceedings of a lawful committee of the House of Representatives: Therefore be it

"Resolved, by the House of Representatives of the Thirty-Second Legislature of the state of Texas, in session at the first called session thereof, in the city of Austin, Texas;

"First, that the said J. F. Wolters, the wit-

ness aforesaid, be and he is hereby held and adjudged to be guilty of contempt of the House of Representatives, and of obstructing the lawful proceedings of the House of Representatives, and of obstructing the proceedings of a lawful committee of the House of Representatives.

"Second, that the said J. F. Wolters be cited to appear at the bar of the House of Representatives at 2 o'clock p. m., on the 24th day of August, A. D. 1911, then and there to show cause, if any he has, why the aforesaid adjudication of contempt against him should not be made final and why he should not be held and adjudged in contempt of the House of Representatives and punished therefor as required and permitted by law.

"Third, that the chief clerk of the House of Representatives and the Speaker thereof, be and they are hereby ordered and directed to issue citation and notice to the said J. F. Wolters, whose place of residence is in Harris county, Texas, but who may be found in Travis county, Texas, to appear at the time and place and for the purpose aforesaid.

"Fourth, that the service of said citation and notice may be made by the sergeant at arms or any assistant sergeant at arms of the House of Representatives, or any officer authorized by law to serve notices and citations of this character, by delivering to said J. F. Wolters, in person, a true copy thereof.

"And whereas, in accordance with said resolution, citation and notice was so issued to the said J. F. Wolters, commanding him to appear at the bar of the House of Representatives at 2 o'clock p. m. on the 24th day of August, A. D. 1911, then and there to show cause why the former adjudication of contempt against him should not be made final, and why he should not be so held and adjudged in contempt of the House of Representatives and punished therefor;

"And whereas, on the 24th day of August, A. D. 1911, the said J. F. Wolters, in obedience to said citation and notice aforesaid did appear at the bar of the House of Representatives, *and did then and there again willfully fail, refuse and decline to answer the said questions so propounded to him by and under the direction of the House Investigating Committee and did willfully fail and refuse to purge himself of the contempt of the House of Representatives heretofore adjudged against him; and it appearing to the House of Representatives that the failure and refusal on the part of the said J. F. Wolters as aforesaid to answer the said questions so propounded to him by the House Investigating Committee was willful on the part of the said J. F. Wolters, and his failure and refusal to answer each and all of said interrogatories and questions jointly and severally was and is an obstruction of the proceedings of the House of Representatives of the Thirty-Second Legislature and it further appearing that his failure to purge himself of contempt of the House of Representatives as aforesaid was willful and contemptuous. Therefore be it*

"Resolved, by the House of Representatives of the state of Texas now in session at the first called session of the Thirty-Second Legislature in the city of Austin, Travis county, Texas, that said J. F. Wolters be and he is hereby adjudged to be guilty of obstructing the lawful proceedings of the House of Representatives and guilty of contempt of the House of Representatives aforesaid, and his punishment therefor is assessed at imprisonment in the county jail of Travis county for a period of 24 hours, unless the first called session of the Thirty-Second Legislature should adjourn sine die within a less period of time, in which event his punishment is assessed at imprisonment in the county jail of said county until the sine die adjournment of the Legislature, and no longer, and that the sergeant at arms of the House of Representatives or any assistant sergeant at arms of the House of Representatives is hereby ordered and directed to take the body of the said J. F. Wolters and commit it to the county jail of Travis county, Texas, for a period of 24 hours, or in the event the first called session of the Thirty-Second Legislature should adjourn sine die within a less period of time, then such officer shall commit the body of the said J. F. Wolters to the county jail of said Travis county, Texas, until such sine die adjournment, and no longer. Unless, however, the said J. F. Wolters shall purge himself of said contempt by appearing before the said House Investigating Committee, and then and there testify in answer to each and all of the questions herein set out and specified. And the sheriff of Travis county, Texas, is hereby ordered and directed to receive the body of the said J. F. Wolters into the jail of Travis county, Texas, for the purpose of said confinement; and a copy of this resolution, certified to under the hand of the Speaker of the House of Representatives and the chief clerk of the House of Representatives, shall have the force and effect of a writ of commitment hereunder, and shall be sufficient authority for the imprisonment of said J. F. Wolters. Said officers are also authorized to and shall issue a writ of commitment hereunder."

Journal, 525.

In my judgment more complete and perfect proceedings could not have been made nor recorded in the Journal of the House than was had and made in this whole matter. The last proceedings of the House are fully and completely shown on pages 473 to 528 of the House Journal of August 24 and 25, 1911.

As stated above, just after the House had completed and closed its proceedings and judgment against Mr. Wolters, the Governor

sent another message to the Legislature submitting four additional subjects of legislation. Journal, 528. None of these, however, were subjects the Legislature had requested him to submit. At once on August 25th, after the House had adjudged Mr. Wolters guilty of contempt for obstructing its proceedings as above shown, the Speaker and chief clerk issued the proper commitment writ, directed to the sergeant at arms, or any assistant, of the House, and to the sheriff or any constable of Travis county, Tex., as directed and commanded by the House, reciting the said proceedings and judgment against Mr. Wolters, and commanding said officials to take the body of Mr. Wolters and deliver him to said sheriff, to be by him confined in the Travis county jail as required by said judgment and order of the House. The said sergeant at arms on the same day, in obedience to said writ, took Mr. Wolters to have him imprisoned as ordered. Mr. Wolters at once sued out a writ of habeas corpus before Judge HARPER, one of the judges of this court, who, upon consultation with the other two judges and with their consent and concurrence, granted said writ, and, pending the hearing before this court, granted him bail, which he immediately gave, and he is now subject to the order of this court under said House proceedings and judgment.

The questions of the power of each house of the Legislature, one of the co-ordinate branches of this government, and the liberty of the citizen, being involved, is my only excuse for making the full and complete statement I have. The briefs and argument thereon as well as the oral arguments heard on the submission of this cause, by the eminent and able attorneys on both sides, show their exhaustive research, careful investigation, and mature reflection and deliberation, and has been a material aid to me in reaching my conclusions. I will now briefly discuss the questions in this case and give my conclusions thereon:

[10] First. Did the House of Representatives have the right, power, and authority at this special session and during its sitting to investigate the questions, or any of them, which it required to be investigated by its resolution above adopted on August 5th, and by and through a committee composed of its members duly and properly authorized and required by it? It is my opinion that it unquestionably had this right, power, and authority on each and all of these grounds:

(1) Because it was a separate and independent branch of the Legislature, and by reason thereof it had, not only all the power and authority expressly, or by necessary implication, conferred upon it by the people, the sovereign, by the Constitution, but also the inherent power and right, as such was not prohibited either by any express provision or necessary implication of either the Constitution of this state or of the United States.

[5] (2) Because on August 5th the Governor, by his special message and proclamation to the Legislature, not only authorized, but urged, the appropriation by the Legislature of "an extra appropriation for the purpose of investigating violations of the poll tax and election laws, and the enforcement of the same against offenders," wherein he further said: "It is alleged that irregularities and frauds were committed in the recent election on the proposed amendment to the state Constitution prohibiting the manufacture and sale of intoxicating liquors in Texas. It is also charged that in different counties and localities individuals and county officials violated the law regulating the payment of poll taxes." The very things the Legislature, and each House thereof, then properly and regularly determined and undertook to investigate *after this message of the Governor*. This unquestionably called for "legislation."

(3) Because the House "shall be the judge of the qualifications and election of its own members" (section 8, art. 3, Constitution), and "may determine the rules of its own proceedings, punish members for disorderly conduct, and with the consent of two-thirds expel a member * * *" (Const. § 11, art. 3). I fully concur in that part of Judge HARPER'S opinion in the Gray Case on this point. It is needless for me to here repeat what he holds therein.

In Cushing's Law and Practice of Legislative Assemblies, in discussing the rights of investigation in section 634, he says: "It has always, at least practically, been considered to be the right of legislative assemblies, to call upon and examine all persons within their *jurisdiction*, as witnesses, in regard to *subjects* in reference to which *they have power* to *act*, and into which they have already instituted, or are about to institute, an investigation. Hence they are authorized to summon and compel the attendance of all persons, within the limits of their constituency, as witnesses, and to bring with them papers and records, in the same manner as is practiced by courts of law. When an assembly proceeds by means of a committee in the investigation of any subject, the committee may be, and usually is, authorized by the assembly to send for persons, papers, and records."

Again, in discussing the jurisdiction of the Legislature, he says:

"A legislative assembly being authorized, in the exercise of its constitutional functions, both administrative and legislative, to institute inquiries into all grievances of the citizen, which are remediable by legislative enactment, and into all abuses of power by persons in office, with a view either to their removal by address, or to their punishment by impeachment, it has a power to investigate all such subjects, by the examination of witnesses, or otherwise, in the same

manner as is practiced by grand juries; and, as a consequence of this authority, the assembly itself, its officers, and servants, and all persons connected with every such investigation, enjoy a perfect immunity for everything fairly said, done, or published in the course of such inquiry.

"This jurisdiction, being conferred for the purpose of enabling a legislative assembly to discharge its peculiar functions, in a free, independent, and intelligent manner, is in its very nature, original, exclusive, and final.

"It is original, because, being conferred for the benefit of the assembly itself, and not for the advantage of any private individual, it arises only in reference to matters growing out of the proceedings, or connected with the official character of the members, of the assembly.

"It is exclusive, because, otherwise, the objects for which it is conferred, namely, the freedom and independence of the assembly, would fail of their attainment, inasmuch as a portion of the means by which the assembly is enabled to perform these functions would be restrained, by the concurrent or appellate jurisdiction of some other tribunal.

"But this jurisdiction is not exclusive in any other sense than this: That no other tribunal can control the action, set aside the judgments, or revise the proceedings, of the assembly. * * * "

Sections 641, 645, 646, 647, and 648.

Again, Mr. Cushing, in discussing the powers of the Legislature and the distribution of the functions of government into the three departments of legislative, executive, and judicial, says: "In the exercise of their ordinary functions these three departments are entirely independent and free from the control each of the others; but from the nature of the functions attributed to each, the legislative, or lawmaking, must necessarily be the superior and sovereign power, for, though it may not rightfully interfere with either of the others in the discharge of their respective duties, as a superior interferes in the proceedings and controls the acts of an inferior power, yet, it may, in the exercise of its own appropriate functions, enlarge, restrain, alter, or regulate, at its discretion, the powers and functions of the other departments." Section 704. Subject, of course to constitutional limitations.

This court in Long v. State, 58 Tex. Cr. R. 211, 127 S. W. 209, in passing upon section 40, art. 3, of our Constitution, which is: "When the Legislature shall be convened in a special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days"—and in discussing the constitutionality of an act of the Legislature enacted at a special session, "changing, extending and rearranging the terms of the criminal district court for Harris and Galveston counties," wherein it was claimed that that subject of legislation had not been submitted to the Legislature by the Governor in the following language: "To enact adequate laws simplifying the procedure in both civil and criminal courts of this state, and to enact laws amending and changing the existing laws governing court procedure as will reduce the present unusual and unnecessary expense of litigation and as will tend to the speedy administration of justice in civil and criminal cases," speaking through Judge Ramsey, among other things, said: "The Constitution does not require the proclamation of the Governor to define the character or scope of legislation which may be enacted at a special session, but only in a general way to present the *subjects* for legislation, and thus confine the business to a particular field, which may be covered in such way as the Legislature may determine. Baldwin v. State, 21 Tex. App. 591 [3 S. W. 109]; Brown v. State, 32 Tex. Cr. R. 119 [22 S. W. 596]; Devereaux v. City of Brownsville (C. C.) 29 Fed. 742," and in further construing the said section 40, art. 3, of the Constitution, further said: "We think these propositions, laid down in the valuable brief filed in behalf of the state, may be accepted as unquestionably sound: First. In the absence of a constitutional provision limiting the same, the jurisdiction of the Legislature when convened in special session is as broad as at a regular session, and that section 40 of article 3 of the Constitution constitutes an exception to the general rule, and is a limitation of the general power of the Legislature. And where such limitation is thus imposed upon the general power of the Legislature, it should be strictly construed, and should not be given effect as against such general power, unless the act in question is clearly inhibited by such limitation. Baldwin v. State, 21 Tex. App. 591 [3 S. W. 109]; State v. Shores, 31 W. Va. 491 [7 S. E. 413], 13 Am. St. Rep. 875; People v. Blanding, 63 Cal. 333; Cooley on Const. Lim. 204." His language therein to the effect "that the jurisdiction of the Legislature, when convened in special session, is as broad as at a regular session," is, in my opinion, specially applicable in this case. That was the unanimous opinion of this court at that time.

The Supreme Court of this state in Day Co. v. State, 68 Tex. 545, 4 S. W. 874, through that great judge, then Associate Justice, afterwards Chief Justice, Stayton, said: "The general rule is that the Legislature may exercise any power not denied to it by the Constitution of the state which is not delegated to the government of the United States, or the exercise of which is not prohibited by the federal Constitution." Again, this court in Ex parte Mabry, 5 Tex.

App. 97, said: "The government of the United States is one of enumerated powers; the governments of the states are possessed of all the general powers of legislation. When a law of Congress is assailed as void, we look to the national Constitution to see if the grant of specified powers is broad enough to embrace it; but when a state law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one unless, in the Constitution of the United States or of the state, we are able to discover that it is prohibited. We look in the Constitution of the United States for grants of legislative power, but in the Constitution of the state to ascertain if any limitations have been imposed upon the complete power with which the legislative department of the state was invested in its creation. Cooley's Const. Lim. 173." This same doctrine is not only recognized, but expressly restated, by the Supreme Court of the United States in the case of Kilbourn v. Thompson, 103 U. S. 182, 26 L. Ed. 377. To the same effect are the following cases: Holley v. State, 14 Tex. App. 511; Ex parte Brown, 38 Tex. Cr. R. 304, 42 S. W. 554, 70 Am. St. Rep. 743; Bank v. Brown, 26 N. Y. 467; Re Thirty-Fourth St. R. Co., 102 N. Y. 343, 7 N. E. 172; People v. N. Y. Police Board, 107 N. Y. 235, 13 N. E. 920; People v. Tompkins, 64 N. Y. 53. In fact, this doctrine in this country is elementary, and no court of any standing has held otherwise.

In the case of Burnham v. Morrissey, 14 Gray (Mass.) 239, 74 Am. Dec. 676, the Supreme Court of Massachusetts, through Chief Justice Shaw, said: "The House of Representatives has many duties to perform, which necessarily require it to receive evidence, and examine witnesses. *It is the grand inquest for the commonwealth*, and as such has power to inquire into the official conduct of all officers of the commonwealth, in order to impeachment. It may inquire into the doings of corporations, which are subject to the control of the Legislature, with a view to modify or repeal their charters. It is the judge of the election and qualification of its members. It has power to decide upon the expulsion of its members. It has often occasion to acquire a certain knowledge of facts, in order to the proper performance of legislative duties." This same doctrine is announced in many other cases by the Supreme Courts of various states. In my investigation I have been unable to find in any case any well-considered opinion where this doctrine is denied. In fact, I think it incontrovertible that either house of the Legislature of this state has the power and the authority to make any investigation which will aid it in the proper discharge of any of its legislative functions, strictly as such, as well as discharging whatever real or quasi judicial power and authority it has, and for this purpose can compel witnesses to appear and answer all pertinent questions, and to produce any and all books, documents, and papers which will aid it in ascertaining the facts in question. To my mind this is so clearly within the proper power, right, and jurisdiction of either house of the Legislature of this state, at either a regular or special session thereof, that it is unnecessary to further discuss it, or cite additional authorities. Many of the authorities I cite on other propositions herein fully and completely sustain and support this doctrine.

[11] Second. The next question is: Were the said questions, or any of them, which were asked Mr. Wolters, pertinent and material to the subjects of inquiry before the House by and through said committee? This question is included within the first question above discussed by me, and might appropriately have been discussed therein. I again concur fully in what Judge HARPER has said and decided in the Gray Case on this question.

Said investigating committee unanimously, deliberately, and solemnly declared and decided that said questions "were pertinent and material," and so reported to the House, and the House in its deliberate and solemn proceedings declared and decided "that each and all of said questions were pertinent and material" to the questions under investigation by it. To my mind there can be no doubt that each and every one of these questions were pertinent and material, and, if they had been answered, they might have established or disproved substantially, if not fully, at least some of the material facts sought to be developed. That each and every one of the questions to Mr. Wolters, which he willfully and deliberately refused to answer, pertaining to the question under investigation by the House, "affecting in any way the election or qualification of the members of the House of Representatives, * * * " or if, as further stated in subdivision 8 of the resolution adopted by the House on August 5th, "there exists in this state a conspiracy or formed purpose or design improperly to control, secure, or effect in whole or part the election or qualification of the members of the House of Representatives," to my mind, were pertinent and material, there can be no doubt, under sections 8 and 11, art. 3, of our Constitution, hereinabove quoted.

Section 4, art. 6, of our Constitution, not only as originally adopted, but readopted by the people on August 11, 1891, is: "Sec. 4. In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box. * * *" This constitutional provision means something. In fact, it means a very great deal. Before the resolution of the House ordering this investigation was adopted, as stated above, the Governor in a special message to them

had told them: "It is alleged that irregularities and frauds were committed in the recent election in the proposed amendment to the state Constitution prohibiting the manufacture and sale of intoxicating liquors in Texas. It is also charged that in different counties and localities individuals and county officials violated the law regulating the payment of poll taxes"—and then urged the Legislature to legislate upon that subject to the extent of making an appropriation unusually large to be used by him for the purpose of himself investigating these questions. The House immediately thereupon adopted the resolution calling for an investigation by it, among other purposes, for the very purpose of determining for itself the truth of these charges, and then it could also decide whether or not it would make such an unusually large appropriation for the purposes specified by the Governor. Unquestionably thereunder it had the power and authority to investigate those questions for itself, so that it could determine, before enacting the legislation called for by the Governor, whether or not it was necessary or proper to do so. That it desired such information also for the further purpose of then, or in the future, legislating or amending the laws on the subject of frauds and irregularities in elections, and the further regulation and payment of poll taxes, could make no difference. If the Governor wanted them to legislate on that subject for him, they could also investigate, at least, whether they needed legislation upon that subject for the people they represented as well, and whether they were authorized to amend the election laws and the laws regulating the payment of poll taxes so as to further "detect and punish fraud and preserve the purity of the ballot box," or not.

To my mind it was peculiarly and especially appropriate that at this special session of the Legislature the House should fully make this investigation. This Legislature at its regular session, which was concluded less than six months prior to this special session, had submitted the said constitutional amendment to the people for adoption or rejection, and in order that said election should in every way be free from fraud and that the sovereign voter of the state could cast his unpurchased vote, and vote for or against its adoption, without his vote otherwise being improperly influenced, had enacted special legislation thereon. That, notwithstanding this, the greatest frauds, and illegal voting and illegal issue and use of poll taxes, was charged openly and persistently by a large portion of the citizens of Texas. The election had just been held, less than two weeks before the Legislature convened. The witnesses were then living and easily accessible. It was not only appropriate, but even imperative, that such investigation should then be made, so that the evidence could be had and preserved by the "*grand inquest for the state*"—the House and Senate of the Legislature.

By the purity of the ballot box, used in our Constitution, is meant, not that the box in which the ballots are placed shall be preserved pure, but that the vote of the voter himself shall be preserved pure, and shall not be tainted by the money power in the purchase thereof, nor of the liquor power in the corruption thereof, nor by any other power, but that that ballot of the voter himself shall thus be kept pure and free. The very foundation of this government is based on the purity of the ballot itself. When that is corrupted, by either the liquor interest or any other interest, or the money power, then this government cannot longer last. And it will no longer be "a free government founded on the authority of the people and instituted for their benefit." Section 2, art. 1, Const.

In my judgment, I again state that there can be no doubt that each and every question that was asked Mr. Wolters, which he willfully declined to answer, was both pertinent and material to the investigation that the House was then making, with full power, authority, and right to do so, as deliberately determined by both the said committee and the House of Representatives. It will be noted that Mr. Wolters did not claim that his answer to any of the questions would in any way incriminate him. In his claim, if so, that the questions sought from him any of his private personal affairs, he was much mistaken. The election that had just been held and the question voted upon affected every man, woman, and child of the 4,000,000 of people of the state of Texas. The election was necessarily a public one. Every person knew of it. The acts of Mr. Wolters and of those associated with him, and those under his authority and direction, pertaining to the conduct of said election, and of the votes polled thereat, and the influences, whether of money or otherwise, employed therein to affect the voter, if there was any such, was of the most vital public importance to the government of the state of Texas and to every one of the citizens of the state. None of Mr. Wolters' individual personal private affairs were attempted to be gone into. It was only of his acts affecting the public in connection with the election just held.

The Supreme Court of the United States, in the Chapman Case, 166 U. S. 669, 17 Sup. Ct. 680, 41 L. Ed. 1154, in speaking of the questions asked the witness in that case, said, and so I say of the questions asked the witness in this case: "The questions were not intrusions into the affairs of the citizen. They did not seek to ascertain any facts as to the conduct, methods, extent, or details" of his individual personal private affairs, but were of his acts and conduct pertaining to one of the most material questions dealt with by this state or any other. "We cannot regard these questions as amounting to an

unreasonable search into the private affairs of the witness, simply because he may have been in some degree connected with the alleged transactions; and as investigations of this sort are within the power of either of the two houses, they cannot be defeated on purely sentimental grounds. The questions were undoubtedly pertinent to the subject-matter of the inquiry." All of the authorities lay down, and none dispute it, that where the tribunal making the investigation has the power and authority to do so, and the questions are pertinent and material, no witness can refuse to answer, because of any confidential communication to him, nor of any private sentiment he may have, and he can only refuse to answer when his answers will tend to incriminate him, or they are confidential communications between attorney and client, or such like. Neither could he be the judge of whether the questions asked him were material and pertinent. The House and its committee had the right to decide that. Nor could he be immune from examination or cross-examination because he had read to the committee his conclusions as to any of the pertinent and material questions under investigation. The House and its committee undoubtedly had the right to examine him as a witness on each and all of these matters, in its own way, and probe the witness as to the *facts* from which he drew his conclusions.

Third. Another question is: When the Legislature, or either house thereof, acts within the scope of the authority vested in it, its motives for its acts cannot be inquired into or questioned by any other tribunal. I again fully concur in what Judge HARPER says and holds on this question in the Gray Case. On this question I will quote only briefly some of the authorities, and cite others. No court of high standing, nor reputable author, has ever held that the judgment of any tribunal which had final jurisdiction of the subject-matter and of the person, and authority and jurisdiction to render the particular judgment, is subject to collateral attack, or that the motive of such tribunal can be inquired into by any other tribunal. "The courts cannot impute to the Legislature any other than public motives for their acts. People v. Draper, 15 N. Y. 532, 545, per Denio, C. J. 'We are not made judges of the motives of the Legislature, and the court will not usurp the inquisitorial office of inquiring into the bona fides of that body in discharging its duties.' Shankland, J., in the same case, 15 N. Y. 555. 'The powers of the three departments are not merely equal. They are exclusive in respect to the duties assigned to each. They are absolutely independent of each other. It is now proposed that one of the three powers shall institute an inquiry into the conduct of another department, and form an issue to try by what motives the Legislature were governed in the enactment of a law. If this may be done, we may also inquire by what motives the executive is induced to approve a bill or withhold his approval, and in case of withholding it corruptly by our mandate compel its approval. To institute the proposed inquiry would be a direct attack upon the independence of the Legislature, and a usurpation of power subversive of the Constitution.' Wright v. Defrees, 8 Ind. 298, 302, *per* Gookins, J. 'We are not at liberty to inquire into the motives of the Legislature. We can only examine into its power under the Constitution.' Per Chase, C. J., in Ex parte McCardle, 7 Wall. 506, 514 [19 L. Ed. 264]. The same doctrine is restated by Mr. Justice Hunt, in Doyle v. Continental Ins. Co., 94 U. S. 535 [24 L. Ed. 148]."

Judge Cooley, in his work on Constitutional Limitations (7th Ed., p. 258), says: "And although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the Legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the Governor in the exercise of a discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people." Amy v. Watertown, 130 U. S. 319, 9 Sup. Ct. 530, 32 L. Ed. 946; People v. Orange County Sup'rs, 17 N. Y. 235; Com. v. McWilliams, 11 Pa. 61; Sharpless v. Philadelphia, 21 Pa. 147, 59 Am. Dec. 759; M. B. of Excise v. Baine, 34 N. Y. 657; People v. Budd, 117 N. Y. 1, 22 N. E. 670, 682, 5 L. R. A. 559, 15 Am. St. Rep. 460.

Fourth. The only other question necessary to discuss and decide is: Has the House of Representatives of our Legislature the right, power, and authority to punish by imprisonment for contempt one not a member, who obstructs its proceedings? It is my opinion that the House, without a shadow of doubt, has this right, power, and authority, on two grounds: (1) Because the Constitution, in plain, clear, and unequivocal language, has expressly given it such right, power, and authority. (2) Because it has the inherent right and power of self-protection, and this is the only mode it can protect itself.

I believe these propositions are correct, both on reason and authority. As shown above, of the three great departments—the legislative, executive, and judicial—the powers of the government this state is divided into, "from the nature of the functions attributed to each, the legislative must necessarily be the superior and sovereign," or at least have functions covering a broader field than either of the others. It, of course, cannot exercise any power properly belonging to either of the others, except where the Constitution expressly permits it. Section 1,

art. 2. Yet it has clearly judicial powers in some instances, and also some executive, and all "legislative power of the state"—which is "all which the people possessed," except where limited by the Constitution (Brown v. Galveston, 97 Tex. 8, 9, 10, 75 S. W. 488)—is expressly vested in the Legislature, and besides this it has expressly judicial functions. Neither of the others has any legislative powers. Is it possible that this great —possibly the greatest—department of the sovereign people has not the inherent power and authority to itself protect itself in the orderly discharge of its functions and in its regular proceedings? Is it under the necessity of calling upon one of the other departments for self-protection? I answer, when in session, unquestionably it itself has this inherent power, and it is not under the necessity of calling upon either of the other departments for self-protection, whether it is greater than the others or not.

In 36 Cyc. 851, this is laid down as the law: "The Legislature, or either branch thereof, has power to institute investigations or inquiries in respect to matters properly coming before it, and in this connection may require witnesses to attend and testify before it, or one of its committees, and it has power to punish for contempt witnesses summoned by it who refuse to appear, or to testify, or to produce documents which they have been lawfully required to produce." Cushing's Law and Practice of Legislative Assemblies, in section 655, says: "Like every other tribunal, a legislative assembly is authorized to punish persons, whether members or others, who are guilty of any contempt towards it, by disorderly or contumacious behavior in its presence, or by any willful disobedience to its orders. It seems necessary to observe that the contempts punishable by a legislative assembly are not confined to proceedings in its judicial capacity, but may arise in the course of its legislative or other functions."

The Supreme Court of the United States, in Anderson v. Dunn, 6 Wheat. 204, 5 L. Ed. 242, while recognizing and announcing the doctrine that Congress and each house thereof had only such powers as were expressly, or by necessary implication, delegated to them, yet expressly held that the House alone had the power and authority as a necessity for self-protection to punish for contempt. In my opinion the reasoning of the opinion in that case is very forcible and convincing. I know that in Kilbourn v. Thompson, 103 U. S. 168, 26 L. Ed. 377, the same court expressed some criticism of the extreme effect some of the grounds that decision might lead to by stating only "that the tendency of modern decisions everywhere is to the doctrine that the *jurisdiction* of a court or other tribunal to render a judgment affecting individual rights, is always open to inquiry, *when the judgment is relied upon in any other proceeding.*" (Last italics mine.) But the Kilbourn Case does not overrule the Anderson Case. Neither does the Kilbourn Case decide that the House of Representatives of Congress does not have the power to punish for contempt in the exercise of its legislative functions alone, for as to that doctrine the court expressly holds: "This latter proposition is one we do not propose to decide in the present case, because we are able to decide it [the case] without passing upon the existence or nonexistence of such a power in aid of the legislative functions." 103 U. S. 189, 26 L. Ed. 377.

The case of Anderson v. Dunn, supra, has never been overruled. What the court did hold in the case of Kilbourn v. Thompson, supra, is best expressed by the United States Supreme Court inself in the case of In re Chapman, 166 U. S. 668, 17 Sup. Ct. 680, 41 L. Ed. 1154, as follows: "In Kilbourn v. Thompson, 103 U. S. 188, 26 L. Ed. 386, among other important rulings, it was held that there existed no general power in Congress, or in either house, to make inquiry into the private affairs of a citizen; that neither house could, on the allegations that an insolvent debtor of the United States was interested in a private business partnership, investigate the affairs of that partnership, as a mere matter of private concern; and that consequently there was no authority in either house to compel a witness to testify on the subject." I concede that in the argument of the court in the Kilbourn Case doctrines are announced at variance with the case of Anderson v. Dunn, supra, but considered with what the court determined and what it said about the Anderson Case it is not authority for a contrary doctrine. In my opinion the Kilbourn Case is wholly unlike this, and is no pertinent authority in this case, in its last analysis.

In Re Chapman, supra, the Supreme Court of the United States expressly sustained the power of the United States Senate to punish a witness for contempt who refused to answer pertinent questions before its investigating committee, which was acting under a resolution of the Senate alone in investigating "newspaper charges that members of the Senate were yielding to corrupt influences in the consideration of certain legislation." Among the important rulings of the Supreme Court of the United States in that case are these: "Under the Constitution the Senate of the United States has the power to try impeachments; to judge of the elections, returns, and qualifications of its own members; to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; *and it necessarily possesses the inherent power of self-protection.*" (Italics mine.) And again: "We grant that Congress could not devest itself, or either of its houses, of the essential and inherent power to punish for contempt in cases to which the

power of either house properly extended." That case is clear authority to the effect that each house of Congress "necessarily possesses the inherent power of self-protection," by punishing a contumacious witness with imprisonment for contempt, and that Congress itself "could not devest itself, or either of its houses, of the essential and inherent power to punish for contempt in cases to which the power of either house extended."

It may be unnecessary to go to the extent of holding that the House had the inherent right, power, and authority to punish for contempt one obstructing its proceedings. I willingly concede this for argument's sake, for, as I state above, the Constitution in plain, clear, and unequivocal language has expressly given the House this power. Section 15, art. 3, is: "Each house may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing *any* of its proceedings. * * *" Restated: "Each house may punish, by imprisonment, during its sessions, any person not a member * * * for obstructing *any* of its proceedings."

This provision seems never to have been passed upon by any of the courts in this state, except in one case by our Supreme Court. Canfield v. Gresham, 82 Tex. 10, 17 S. W. 390. In that case, Canfield filed before a justice of the peace at Austin, Tex., a complaint, charging that the Speaker of the House, naming him, and another, an officer of the House, unlawfully and willfully assaulted him. Upon this complaint the justice issued a warrant for the arrest of these persons, which was executed by the constable, by arresting them and taking them before the justice. Canfield had nothing more to do with the matter after filing the complaint, and was not present when the arrests were made. Thereupon the House by resolution required Canfield to appear before the bar of the House to show cause why he should not be adjudged guilty of comtempt of the House and imprisonment therefor. He was brought before the House, and, not purging himself of contempt, as the House thought, the House by resolution declared him "guilty of contempt of this House in obstructing its proceedings," and ordered him confined in the jail of Travis county for 48 hours, which was done. He afterwards sued all the members of the House who voted for this resolution and the officer of the House who executed the process for damages. The lower court, after hearing the evidence, peremptorily instructed a verdict against Canfield. He appealed. The validity of his said imprisonment, and the power and authority of the House to so adjudge, and imprison him, came directly before the Supreme Court, which after reciting the facts, and quoting said constitutional provisions (section 15, art. 3, and section 21, art. 3), said: "The House had unquestionably the right to determine whether or not the acts of plaintiff [Canfield] were an obstruction to its proceedings, within the meaning of the Constitution, and, having so determined, to cause him to be imprisoned as he was."

The House in this case, as well as its committee, clearly and unequivocally determined, decided, and adjudged that Mr. Wolters was "guilty of obstructing the lawful proceedings of the House of Representatives," and directed his imprisonment for 24 hours. That all this, as shown by the journal of the House, was its "proceedings," to my mind, is incontrovertible.

[12] Let me briefly restate the salient facts: The House by a proper resolution determined to make the investigation, which it, without doubt, had the right and power to do. It appointed a committee of its own members, and ordered it to do so. The committee, in obedience thereto, undertook to do so, and properly had Mr. Wolters come before it as a witness. When he was asked, and required to answer, "pertinent and material" questions, he willfully refused. The committee reported all this in full to the House. The House determined the questions were pertinent and material, and that by his willful refusal to answer he was "obstructing its proceedings," and entered judgment nisi against him for contempt, and by proper resolution ordered him to appear before its bar, to show cause why such judgment nisi should not be made final, and gave him the opportunity to answer the questions and to purge himself of contempt. He so appeared, and after full hearing not only failed to answer the questions and to purge himself of contempt, but still willfully denied and defied the House and its power and authority in its proceedings of investigation. Thereupon the House by full resolutions declared and determined that he was "guilty of obstructing its lawful proceedings," and ordered him punished for contempt by confinement for 24 hours. Each and all these proceedings are clearly and fully and completely shown in the journal of the House. To my mind, it follows as a necessary consequence that this court is absolutely without right or power to prevent the judgment of the House from being enforced. To do so, it seems to me, would be usurping a power and authority prohibited by the Constitution. Article 2.

To contend or claim that the action of the House was void and could not be enforced because the journal of the House does not show that all this was a "proceeding of the House," it seems to me, is without show of reason, and directly contrary to the very journal itself, and the clear determination of the House. The "proceedings" of the House or Senate in each and every instance where a party was punished for contempt by either and sustained by the courts in the cases cited by me herein, clearly show exactly the

same course of dealing. In fact, I think it is the only proper way to have done and shown it by the journal. It will not do for this court to decide that, unless the House itself in open session conducts the examination of the witness and asks him all the questions, its proceedings are void; for the House, and not this court, has the power and authority to determine its course of procedure. All the authorities so hold.

I believe that no well-considered opinion by the courts of any of the states can be found which holds that, where either House of a Legislature has jurisdiction of the matter before it, it has no power to punish for contempt any one willfully obstructing its proceedings, unless the Constitution of such state either expressly or by necessary implication forbids it such power. The case of State v. Guilbert, 75 Ohio St. 1, 44, 78 N. E. 931, 934, holds that neither house has such power, but expressly states that the reason of that is the Constitution of that state "is explicit in excluding from the legislative department the exercise of any power which is not delegated in the Constitution," and that no such power is delegated to either house thereof or of the Legislature. In addition to the authorities herein above cited, I cite the following. Many of them not only discuss and decide this particular question, but also others I have already discussed and decided herein. 36 Cyc. 851, and cases cited in notes 27 and 28; In re Chapman, 166 U. S. 671, 672, 17 Sup. Ct. 677, 41 L. Ed. 1154; People ex rel. McDonald, 99 N. Y. 481, 2 N. E. 615, 52 Am. Rep. 49; State v. Matthews, 37 N. H. 453; Rapalje on Contempt, § 2, p. 3; Cooley's Const. Lim. 164 (7th Ed. p. 193); Ex parte Parker, 74 S. C. 466, 55 S. E. 122, 114 Am. St. Rep. 1011; In re Falvey, 7 Wis. 630; Burnham v. Morrissey, 14 Gray (Mass.) 226, 74 Am. Dec. 676; Anderson v. Dunn, 6 Wheat. 204, 5 L. Ed. 242; People v. Sharp, 107 N. Y. 427, 14 N. E. 319, 1 Am. St. Rep. 851; Ex parte Lawrence and Leavings, 116 Cal. 299, 48 Pac. 124; Ex parte McCarthy, 29 Cal. 395; Lowe v. Summers, 69 Mo. App. 649; In re Gunn, 50 Kan. 155, 32 Pac. 470, 948, 19 L. R. A. 519.

In view of the conclusions I have reached, and announced herein, it is my opinion that the relator cannot be discharged by this court, and that he should be remanded by this court to the custody of the sheriff of Travis county, to be by him imprisoned for 24 hours as adjudged and commanded by the House of Representatives of the Legislature of Texas; and I therefore dissent from the disposition made of this case by the court.

On Motion for Rehearing.

DAVIDSON, P. J. On a former day of this term applicant was released from custody for reasons stated in the original opinion. The state has filed a motion for rehearing, alleging various grounds why the original opinion discharging applicant was erroneous. Applicant files a replication or answer thereto, and also moves to dismiss the motion for rehearing, for want of authority in this court to entertain it, for the following reasons:

(1) By all respectable authority, a proceeding in habeas corpus to enlarge one unlawfully restrained of his liberty is considered as a criminal proceeding, and the action to be a criminal case.

(2) Under the Constitution and laws of Texas, the state has no right of appeal in criminal cases.

(3) That the state of Texas in criminal cases has no right to ask for a new trial.

(4) That the relator has already been discharged and found not guilty, and is no longer in custody, by order of the final judgment of this court discharging him, and that his bondsmen thereby have been discharged, and no longer liable upon said bonds, and if this court were to grant the rehearing, it would be necessary to issue warrant of arrest and to enter a new decree commanding the arrest of applicant and imprisonment, independent of the judgment of the House of Representatives.

[20] This motion should be sustained upon all of the propositions asserted. There has been a great deal written by courts with reference to what it takes to constitute a civil and criminal contempt, and drawing the distinction between the two. Whatever the nice line of distinction may be, or how closely they have been drawn, there is absolutely no question of the fact or of the law of this case that this is one of criminal contempt. There are no elements of the civil contempt connected with or growing out of it.

[18] The rule may be fairly stated from 7 Am. & Eng. Ency. of Law, p. 28: "Generally it may be said that a criminal contempt embraces all acts committed against the majesty of the law, and the primary purpose of their punishment is the vindication of public authority." Numerous instances are given and authorities cited to support this proposition, among others Savin, Petitioner, 131 U. S. 267, 9 Sup. Ct. 699, 33 L. Ed. 150, Cuddy, Petitioner, 131 U. S. 280, 9 Sup. Ct. 703, 33 L. Ed. 154, and In re Brule (D. C.) 71 Fed. 943. It has been further held that proceedings in contempt are of two classes: First. Those instituted solely for the purpose of vindicating the dignity of the court. These are criminal. Second. Those instituted by private individuals for the purpose of investigating and enforcing their rights. These are civil. The authorities on this proposition are so numerous and so clear we deem it unnecessary to cite them. From any view point of this case which can be taken, it is a criminal contempt, and therefore in a sense a criminal case. The statute expressly authorizes courts to punish by fine and im-

prisonment. The Constitution expressly authorizes jail imprisonment for contempt at hands of Legislature. All these matters are based on the proposition that they violate the dignity and majesty of the law and sovereign power of the state. It is not necessary to bring forward penal provisions of the Constitution in the penal Code to constitute them criminal. That instrument is superior to the Penal Code.

In the somewhat noted case of Gompers v. Buck's Stove & Range Company, 221 U. S. 418, at page 444, 31 Sup. Ct. 492, at page 499, 55 L. Ed. 797, at page 807, 34 L. R. A. (N. S.) 874, reviewing a great number of authorities, Mr. Justice Lamar, rendering the opinion of the court said: "If, then, as the Court of Appeals correctly held, the sentence was wholly punitive, it could have been properly imposed only in a proceeding instituted and tried as for criminal contempt. The question as to the character of such proceedings has generally been raised, in the appellate court, to determine whether the case could be reviewed by writ of error or on appeal. Bessette v. W. B. Conkey Co., 194 U. S. 324, 24 Sup. Ct. 665, 48 L. Ed. 997. But it may involve much more than mere matters of practice. For, notwithstanding the many elements of similarity in procedure and in punishment, there are some differences between the two classes of proceedings which involve substantial rights and constitutional privileges. Without deciding what may be the rule in civil contempt, it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent. He must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself. Boyd v. United States, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746; United States v. Jose (C. C.) 63 Fed. 951; State v. Davis, 50 W. Va. 100, 40 S. E. 331; King v. Ohio & M. R. Co., 7 Biss. 529, Fed. Cas. No. 7,800; Sabin v Fogarty (C. C.) 70 Fed. 482; Drakeford v. Adams, 98 Ga. 724, 25 S. E. 833. There is another important difference: Proceedings for civil contempt are between the original parties, and are instituted and tried as a part of the main cause. But, on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause."

This is the latest expression of the Supreme Court of the United States that has been called to our attention with reference to what it takes to constitute a criminal contempt, and the necessary proceedings where the case is one of criminal and not civil contempt. See, also, as sustaining the Gompers Case, supra, United States v. Cruikshank, 92 U. S. 542, 559, 23 L. Ed. 588. To the same effect, so far as distinction between civil and criminal contempt is concerned, is the celebrated case of In re Debs, 158 U. S. 564, 15 Sup. Ct. 900, 92 L. Ed. 1092. The Debs Case was supposed to practically reach the limit so far as authority of the courts is concerned with reference to imposition of contempts for matters stated in that opinion. Whatever else may be said of the Debs Case, it is clear that it drew a distinction between civil and criminal contempts, and that, wherever it is in conflict with the later opinion of the Supreme Court of the United States, it would be regarded as overruled. Whether there is a difference or not, I do not purpose here to discuss; but all the authorities, so far as we are aware, maintain a distinction between civil and criminal contempts, and, wherever the case is one of criminal contempt, it is treated as a criminal case or action. That is so under all the authorities in Texas, in the history of the Supreme Court and the Court of Criminal Appeals. Then the case will be treated as a criminal case, and not civil.

It is settled by the Constitution and the statutes of Texas that in a criminal case the state cannot move for a new trial. There is a statutory provision that a new trial cannot be granted the state. Article 777, Code of Criminal Procedure, reads as follows: "In all cases of acquittal, the defendant shall be immediately discharged from all further liability upon the charge for which he has been tried, and judgment upon the verdict accordingly shall be at once rendered and entered." Article 836, Code of Criminal Procedure, thus provides: "A new trial can in no case be granted where the verdict or judgment has been rendered for the defendant." These articles are cited from the Revised Criminal Statutes as prepared by the codifiers and adopted by the last Legislature. The authorities in this state are rather numerous upon this question, a few of which will be cited: Perry v. State, 14 Tex. App. 166; Robertson v. State, 14 Tex. App. 211; Holt v. State, 20 Tex. App. 271; Jeter v. State, 86 Tex. 555, 26 S. W. 49; Gay et al. v. State, 20 Tex. 504; Aber v. Warden, 49 Tex. 377; Cassaday v. State, 4 Tex. App. 96; State v. Ward, 9 Tex. App. 462. It will be noted that these cases are scire facias proceedings. Both this and the Supreme Court held that these were criminal cases in which the state would be relegated to the Constitution and laws with reference to motions for new trials and right of appeal. A criminal contempt is certainly as clearly a criminal case as is a sci. fa. on a forfeited bond. It is not the purpose of this opinion to enter into a discussion of those matters. They have been so frequently decided that it is unnecessary to notice them further.

It is also thoroughly settled in this state that the state or the public, as contradistinguished from the citizenship, has no right of appeal in criminal cases. Article 5, § 26, of the Constitution thus declares: "The state shall have no right of appeal in criminal cases." A criminal contempt is a criminal case, as already distinguished, and therefore under no view of this question could the state have

right of appeal. It will be noted that this is an original proceeding in this court, and not an appeal. Had a trial court, either district or county, granted a writ of habeas corpus and discharged the applicant, on the theory that he was not guilty of the contempt, the state would not have the right of appeal or the right to ask for a new trial. Had an appeal been prosecuted from a judgment discharging the applicant, under such circumstances, this court would promptly dismiss the appeal, because of the provisions of the Constitution as set forth above. Article 5. § 26. This court would also have held, if it decided the law correctly, that in the trial court the state would not have the legal right to ask for a new trial. In other words being a criminal case, or a criminal action, the verdict of not guilty, whether at the hands of the court or the jury, discharged the prisoner absolutely and put the state beyond where it could ask for a new trial or take an appeal. As before stated, this is an original application before this court, and upon final disposition of the hearing of the case this court solemnly entered its decree discharging the prisoner from custody, thereby finding him not guilty of the contempt charged or sought to be enforced against him. Had this court, in other character of original proceedings, discharged the prisoner on the theory that he was not guilty of the matters charged against him, there would be no question of the soundness of the proposition that he should not be again arrested, and the state could not ask for a new trial. Under the authorities, this being a criminal case, the same rule will apply.

We might go further, and cite the different sections of the Code of Criminal Procedure with reference to the matters of bail where parties are held under charges. In such cases, where this court or the trial court has discharged under writ of habeas corpus, the state cannot move for new trial, nor can the party be arrested again until after indictment is found. These, while somewhat analogous, are only cited to show that this principle is maintained throughout the criminal law and procedure so far as the right of the state is concerned to appeal or ask for a new trial. My Brethren make of this case a civil suit tried before the House of Representatives, and this court on habeas corpus. This would be fatal to our jurisdiction. This court's jurisdiction is entirely of criminal matters and cases. Ex parte Reed, 34 Tex. Cr. R. 9, 28 S. W. 689; Ex parte Berry, 34 Tex. Cr. R. 36, 28 S. W. 806; Legate v. Legate, 87 Tex. 248, 28 S. W. 281; Telschek v. Fritsch, 38 Tex. Cr. R. 44, 40 S. W. 988; Ex parte Calvin, 40 Tex. Cr. R. 84, 48 S. W. 518.

Being of the opinion that the law is clearly with the motion to dismiss the rehearing, it ought to be sustained, and the motion for rehearing or new trial dismissed. Inasmuch, however, as my Brother HARPER, holds the court has authority to hear state's motion for rehearing, I agree with him fully that said motion for rehearing should be overruled.

HARPER, J. I do not agree with the opinion of Judge DAVIDSON that the motion for rehearing should be dismissed, but think the motion to strike out the motion for rehearing should be overruled. For my views on this question, see the case of Ex parte Gray, infra, this day decided. I am of the opinion, however, that the motion for rehearing should be overruled.

PRENDERGAST, J. [22] I fully concur in Judge HARPER'S opinion in the companion case of Ex parte Gray, infra, this day decided on rehearing, to the effect that this habeas corpus proceeding is not a *criminal case*, and that this court can and should entertain the motion by the state herein for rehearing. The Constitution and statutes prohibiting a new trial to the state in a *criminal case* are wholly inapplicable in my opinion.

I have again reviewed this case and the Gray Case, and my dissenting opinion in this, and the opinion of Judges DAVIDSON and HARPER on the original hearing, and I am confirmed in my opinion that a rehearing should be granted, and relator remanded to custody.

Ex parte Gray.

HARPER, J. By proclamation duly issued the Governor of this state convened the Legislature in special session for certain purposes named in the proclamation. Thereafter, during the session, he called their attention to a number of other matters, and requested or authorized legislation thereon; but neither in the original proclamation nor in any subsequent message to the Legislature did he authorize the passage of a law regulating elections in this state. We do not deem it necessary, in the disposition of this case, to name the subjects on which he did request or authorize legislation, but simply to state that no amendment of the election laws was authorized by him in any of his messages; for in this case, under the facts, it is only necessary for us to determine the authority and power of the Legislature, in the absence of express authority from the Governor, to provide for the gathering of information in regard to the mode and conduct of elections in the past, that such information might form the basis for recommendation for future legislation.

On the fourth day of the special session the following simple resolution was introduced and adopted by the Senate:

"Whereas, the preservation of free government and of the right of the people to control their governmental affairs depends upon maintaining and safeguarding the purity

and freedom and honesty of the ballot and the uncorrupted independence of the voters—in short, upon a patriotic and uncorrupted ballot properly safeguarded so as to secure it against any improper influence and to insure that it will be counted as cast by the voter; and

"Whereas, the laws of this state regulating elections have been recently enacted and changed many times during recent years, and are in need of revision and amendment, as has been generally admitted by many eminent citizens familiar with such laws and their operation; and

"Whereas, the conduct of elections in recent years, particularly that held on the 22d of July, 1911, will, if investigated, place this and future Legislatures of Texas in possession of information which will be very valuable for the purpose of promoting the formulation and passage of such laws as will properly safeguard the purity, freedom and honesty of the ballot and insure that it will be counted as cast and returns of elections made in accordance with the ballots as cast; and

"Whereas, it is charged and believed by a great number of citizens, and has been published in many newspapers throughout the state that large sums of money were used to influence the result of the election held on July 22, 1911, and the manner in which money was used in opposing the adoption of such amendment, and the large amount alleged to have been used, has been challenged and criticised as having been improper, unlawful and against sound public policy, which charges, if true, demand further legislation that will prohibit the corruption of the ballot; and

"Whereas, it has been charged by many persons of good standing that those engaged in operating breweries or interested therein, and those engaged in the business of selling intoxicating liquors, have for many years maintained an organization of some kind for the purpose of collecting funds for improper use in elections in this state and in various counties and precincts in the state and for improper use in influencing legislation in this state; and

"Whereas, it has been frequently charged that funds collected from brewery owners and from liquor dealers have been used in promoting the candidacy of various candidates for office in this state; and

"Whereas, it has been charged by many persons of good standing that various public officers of this state are upon the pay roll of such alleged organizations, and these charges, if true, demand legislation to secure disinterested public service upon the part of all public officials; and

"Whereas, it has been charged by the executive committee of such State-Wide Prohibition Amendment Association, through a report made by a subcommittee of such executive committee, which said report was signed by the following named citizens of Texas as members of said subcommittee: Thomas H. Ball, B. F. Looney, Thomas B. Love, W. J. McDonald, Cullen F. Thomas, D. E. Garrett, R. Harper Kirby, W. T. Bartholomew, T. C. Harriss, William E. Hawkins, B. H. Powell, J. S. Crumpton and Richard Mays—that at the recent election held in this state on July 22, 1911, many fraudulent and illegal ballots were cast, and other methods of fraud and evasion of the election laws resorted to at said election, and other charges made concerning the purity of the ballot box; and

"Whereas, said parties charge that they have gone far enough into an investigation of such election to convince them to a moral certainty that the result of the election of July 22, 1911, does not represent the verdict of a majority of the qualified voters of the state lawfully entitled to participate in the election; and

"Whereas, such committee charges that evidence has been submitted to them which convincingly shows that at the very inception of the contest over the state-wide prohibition amendment and in preparation therefor, that the liquor interests entered into a widespread conspiracy to control the election by the use of very large numbers of poll tax receipts illegally issued and that where sworn officers of the state, such as tax collectors, could be reached, poll tax receipts were procured directly from their offices and mailed to voters who had never applied for them or made the necessary affidavits, although the receipts issued therefor showed upon their face that all the requisites of the law had been complied with; and

"Whereas, it is further charged by said committee that in a number of counties it was the practice to have deputies, in some instances negroes, to go out and solicit the payment of poll taxes, their services being paid for by the liquor interests, which also paid for the poll tax receipts; and

"Whereas, said committee make many other charges which have been published in the daily press of this state, which, if true, render it necessary and proper that this investigation provided for in this resolution should be had to the end that further safeguards may be provided to secure the honesty and fairness of elections and the making of true returns thereof; and

"Whereas, it becomes of vital importance to this or any subsequent Legislature, which may legislate for the purpose of carrying out section 4 of article 6 of the Constitution, that the methods used to evade and violate the laws and destroy the purity of the ballot box shall be known in order that adequate laws preserving the purity of the ballot may be enacted by this or a subsequent Legislature, and the evidence of the violations and evasions of the laws preserved for the assistance of this or any subsequent Leg-

islature which desires to legislate to protect the purity of the ballot box; and

"Whereas, unless an investigation be now made much evidence useful to future Legislatures will become inaccessible: Therefore be it

"Resolved, by the Senate of Texas, that a committee of five (5) be elected by the Senate to conduct such investigation as may be lawful and proper for it to conduct to ascertain and report to the Senate upon the aforesaid matters and the following matters:

"1. The amount of money used by any association of persons or person representing such in promoting and favoring, and the amount of money used by any organization or association of persons, or representative of such in opposing the prohibition amendment to the Constitution, voted upon on July 22, 1911, how such money was used, by whom used, from whom collected, or by whom contributed, for what purpose paid out, to whom paid out, including all matters in connection with such use and such expenditure of such money.

"2. The fraudulent issuance of poll tax receipts, if any, and unlawful payment thereof, or use thereof, and the evasions, if any, of the provisions of the election law to prevent illegal and corrupt voting.

"3. Any frauds committed in procuring naturalization papers, or filing declarations of intention of becoming a citizen.

"4. Any illegal voting in such election and any fraud committed, and the failure, if any, of any of the officers of such election or any officers of any county to comply with the election laws.

"5. What legislation, if any, is advisable to further safeguard elections against corruption, fraud and improper influences.

"6. Whether or not there exists in this state an organization or association of any kind furnishing or expending money to improperly influence elections or legislation in this state, and the methods pursued by such organization, if any, in the conduct of its operation, and the amount of money that is being collected by such organization, the purpose for which it is being collected and how it is being expended, and whether or not the same is being expended in such manner as to contravene sound public policy, and what legislation, if any, may be necessary to remedy the evil.

"7. To report generally upon such legislation as may be necessary to correct any or all of the evils, if any, in relation to these matters about which this investigation is directed.

"In addition to the powers and authority conferred upon the committee hereby created, the said committee shall have all the power and authority granted to such committee by chapter 7 of the General Laws of the state of Texas passed at the Thirtieth Legislature at its regular session and approved February 18, 1907, to be found on pages 6, 7, 8, 9, and 10 of such Laws, and in addition to such powers the said committee hereby created and any member thereof and any subcommittee appointed by such committee shall have all such powers and authority conferred by the act aforesaid and full power and authority to hear testimony, to swear witness, to administer oaths, to send for books, papers, letters, telegrams and documents, and to compel the production of such matters and things before said committee or subcommittee or any member thereof, as such committee or subcommittee or member may deem necessary to the proper carrying out of the purposes of this investigation. And in addition to the means authorized by the act aforesaid, the said committee or any member thereof or subcommittee may report any refusal to obey process or any disobedience of process or any evasion of process to the Senate, and have any person guilty thereof or charged of being guilty thereof brought before the bar of the Senate to be dealt with as the Senate may direct.

"The expenses of the said committee and of any subcommittee and members thereof in conducting the investigation hereby directed and in procuring the attendance of witnesses and paying therefor and the service of process and the paying therefor, and all other expenses necessarily incurred in conducting the investigation shall be paid out of the contingent expense fund of the Senate upon the warrant of the chairman of said committee authorized by the committee itself.

"The said committee shall be known as the Senate Investigating Committee, and such committee shall elect its own chairman and such other officers as it may desire, and establish and make such rules for governing its own procedure and forms of process as may be permitted by law.

"Such committee shall cause the testimony of all witnesses to be taken by a competent stenographer, questions and answers, and shall make a report to the Senate at this session of the Legislature, and shall accompany such report by the evidence taken by it and its recommendation for such changes in the present election laws and for the enactment of such new laws as the evidence adduced may demand for the preservation to the people of their constitutional right to the purity of the ballot."

On the same day the Senate adopted a resolution petitioning the Governor to submit certain subjects for legislation, to wit:

"(1) The amendment of the election laws of this state so as to provide against illegal payment of poll taxes, and to re-enact such further laws as may be necessary to safeguard the ballot box and secure fair and honest elections without a taint of irregularity, fraud or bribery.

"(2) The prohibition of brewers, brewery owners, stockholders therein, saloons, saloon owners, and all others connected directly or

indirectly with the liquor traffic in this state, from contributing to campaign funds to influence elections, and the prohibiting of persons within this state from receiving, using, or disbursing such funds as might be so contributed by the liquor traffic, etc.

"(3) The enactment of suitable legislation requiring all persons engaged in the sale of intoxicating liquors to close their places of business from 7 o'clock p. m. until 6 o'clock a. m., and to keep same closed during those hours, and providing penalties, etc.

"(4) The prohibition of the sale of liquor within this state except in unbroken packages and quantities not less than one quart, and prohibiting same from being drunk on the premises where sold, with penalties, etc.

"(5) The prohibition of the sale of intoxicating liquors within ten miles of any state educational institutions, including the State University, that are supported in whole or in part by appropriation from the state's general revenue, and for penalties, etc."

A committee, consisting of Senators Vaughan, McNealus, Warren, Carter, and Terrell of McLennan, was selected by the Senate as the committee authorized by the above resolution, and after organizing they summoned before them relator, W. H. Gray, who refused to answer a number of questions propounded by the committee or under its authority. The relator answered all questions propounded in regard to violations of then existing laws, but declined to answer who, if any one, was in the employ of the Anti-Prohibition organization, what salary, if any, was paid to such persons, from what source contributions were received, except that none were received from corporations so far as he knew. He declined to answer whether or not he personally was connected with the Anti-Prohibition organization in the recent campaign, whether he secured the services of any one to oppose the amendment, and what, if anything, was paid to such persons, virtually declining to answer any and all questions in regard to the funds received, by whom contributed, the mode and manner of its expenditure, the salary, if any, paid to any one, and questions in regard to the conduct of the recent election.

The committee reported to the Senate the refusal of the witness to answer the questions, embodying in its report the questions propounded, and the fact that the witness had declined to answer, with the following recommendation:

"Whereas, it appearing to the Senate of the state of Texas that the said refusal of said witness to answer said question as aforesaid was willful, and that the same is an obstruction to the lawful proceedings both of the said committee and of the Senate: Therefore be it

"Resolved by the Senate of the State of Texas:

"First. That said W. H. Gray be and is hereby held and adjudged to be guilty of contempt of this Senate and of obstructing the lawful proceedings of a lawful committee of this Senate.

"Second. That the said W. H. Gray be cited to appear before the bar of this Senate at 3 o'clock on the 24th day of August, A. D. 1911, then and there to show cause, if any he has, why the aforesaid adjudication of contempt against him should not be held and adjudged in contempt of this Senate and punished therefor, as required by law."

After a hearing of the cause by the Senate the following resolution was adopted adjudging relator guilty of contempt and assessing his punishment:

"Therefore be it resolved, by the Senate of the state of Texas, now in session in the city of Austin, Travis county, Texas, that W. H. Gray be, and he is hereby, held and adjudged to be in contempt of this Senate, and his punishment therefor is assessed at imprisonment and confinement in the county jail of Travis county, Texas, for the period of twenty-four (24) hours, and the assistant sergeant at arms of this Senate is hereby ordered and directed to take the body of the said W. H. Gray, and commit it to the jail of Travis county, Texas, for the period of twenty-four hours, unless the said W. H. Gray shall sooner purge himself of said contempt and testify before said committee in answer to the questions propounded by it or under its direction, and which he has failed and refused to answer, the said questions being pertinent to the matters authorized by the resolutions hereinbefore set out, and the jailer of Travis county, Texas, is hereby ordered and directed to receive the body of the said W. H. Gray into the jail of Travis county, Texas, for the purpose of the imprisonment and confinement herein imposed; and a copy of this resolution and order shall be a sufficient authority for the commitment and the imprisonment of the said W. H. Gray."

When arrested under a commitment issued by the Lieutenant Governor by virtue of said resolution, relator sued out a writ of habeas corpus, which was granted by a member of this court, and after consultation with all members of the court the cause was set down for hearing at the next regular term of this court. The sergeant at arms of the Senate filed with the court the resolution adopted by the Senate and the writ of commitment issued by the Lieutenant Governor as authority for his action in the premises. Relator appeared and filed the following answer:

"For answer to the return of the respondent filed herein, and showing that he arrested and holds relator by authority of a writ of commitment, issued on the 26th day of August, 1911, by A. B. Davidson, President of the Senate of the Thirty-Second Legislature of said state, and attested by the secretary of said Senate, commanding the arrest and confinement of relator, relator avers that the issuance of said commitment was illegal,

and that the same is now, and has been at all times, void and violative of the Constitution of the United States of America, of the Constitution of the state of Texas, and of the laws of this state, for the following reasons, among others, to wit:

"First. Because the Senate had no lawful authority to create and appoint the committee before which he, on their demand, refused to answer certain questions, and to deliver certain properties, by them propounded to and required of him, and had no lawful authority to pass the resolution under which said committee was acting, and had no authority in law to confer upon said committee the powers, nor any of the powers attempted to be conferred by the resolution providing for and raising said committee, and no authority to pass said resolution in manner and form and substance as it was passed.

"Second. Because said committee had no lawful authority to ask or to require relator to answer any of the questions which he refused to answer, nor to require him to deliver any of the property which he refused to deliver.

"Third. Because said Senate had no lawful authority to pass the resolution adjudging him guilty of contempt and assessing a punishment against him of confinement in the county jail of Travis county, as he had committed no act or offense of which said Senate had jurisdiction.

"Fourth. Your relator avers that the investigation authorized by the resolution passed by said Senate on August 3, 1911, requiring the appointment of said committee, was not offered, introduced, nor passed for any legitimate or lawful purpose, or within the line of the duty or privileges of said Senate, but that same was passed solely for political purposes of the Prohibitionists of the state of Texas, and in order that they might gain or endeavor to gain an unlawful and unwarranted advantage over the Anti-Prohibitionists of this state; that same was not passed, nor was any investigation made, or intended to be made, to gather information in good faith for legislative purposes, nor to aid or assist in any legislation pending or contemplated by said Senate, or the Legislature of which said Senate formed a part, nor to assist or aid in the performance of any duty or lawful act of said Senate, nor were any of the questions asked, to which answers were refused, pertinent or relevant to any legislative proceeding pending or contemplated by said Senate.

"Fifth. Your relator avers that said resolution, and the acts of said committee raised thereby, and the acts and resolutions of the Senate done thereunder, are in violation of the following provisions of the Constitution of the United States of America and of the Constitution of the state of Texas, respectively:

"(a) The attempted punishment, and the manner and form in which it is attempted, of the relator by said Senate, violates that part of the fifth amendment of the Constitution of the United States which provides: 'No person shall * * * be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.' And also violates the fourth amendment of said Constitution, which reads as follows: 'The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.'

"(b) The passage of the resolution, the action of the committee thereunder, and the attempt to punish this relator in the manner and form in which it has been done, is in violation of the following provisions of the Constitution of the state of Texas: Section 9, art. 1: 'The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures and searches, and no warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.' Section 19, art. 1: 'No citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised except by the due course of the law of the land.' Section 29, art. 1: 'To guard against transgressions of the high powers herein delegated, we declare that everything in this bill of rights is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto or to the following provisions shall be void.' Section 1, art. 2: 'The powers of the government of the state of Texas, shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another, and no person or collection of persons being of one of these departments shall exercise any power properly attached to either of the others except in the instances herein expressly provided.' Section 1, art. 3: 'The legislative power of this state shall be vested in a Senate and House of Representatives, which, together, shall be styled "The Legislature of the State of Texas."' Section 11, art. 3: 'Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and with the consent of two-thirds, expel a member, but not a second time for the same offense.' Section 15, art. 3: 'Each house may punish by imprisonment during its sessions any person not a member for disorderly or disrespectful conduct in its respect, or for obstructing any of its proceedings, provided, such imprisonment shall not, at any one

time, exceed forty-eight hours.' Section 32, art. 3: 'No bill shall have the force of a law until it has been read on three several days in each house. * * *' Section 40, art. 3: 'When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.' Section 37, art. 3: 'No bill shall be considered unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.' Section 44, art. 3: 'The Legislature shall provide by law for the compensation of all offices, servants, agents, and public contractors, not provided for in this Constitution, * * * but shall not grant, by appropriation, or otherwise, any amount of money out of the treasury of the state to any individual on a claim, real or pretended, when same shall not have been provided for by pre-existing law, nor employ any one in the name of the state unless authorized by the pre-existing law.' Section 1, art. 5: 'The judicial power of this state shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Criminal Court of Appeals, in district courts, in county courts, in commissioners' courts, and in courts of the justice of the peace, and in such other courts as may be provided by law.'"

Counsel for relator and respondent appeared and made able oral arguments on the questions presented, and have filed briefs manifesting great research and thought, and on account of the importance of the questions involved we have devoted much time to a careful study of the briefs, the authorities cited, and the questions involved. Under the first paragraph of relator's answer it is insisted that one branch of the Legislature (the Senate) had no authority to appoint a committee and authorize it to conduct an investigation for the purpose of obtaining information and making recommendations; that, if such power existed, it existed in the Legislature as a whole, and it would take the concurrent action of both houses, together with the approval of the Governor, to give life and validity to an investigating committee; (2) that, if the Senate had such power in a general session, it did not have it at a special session; that at the special session it was limited in all its actions to such matters as were submitted by the Governor.

[7] Section 40, art. 3, provides that there shall be no *legislation* upon subjects other than those designated by the Governor in his proclamation. If the powers granted the committee come within the meaning of the word *"legislation,"* then it was prohibited at a special session, and would also be in violation of article 3 of section 1, which vests the legislative power in the Senate and House of Representatives jointly. The legal definition of the word "legislation" in Bouvier's Law Dictionary is "the act of giving or enacting laws—the authority conferred by or exercised under the Constitution of a state or of the United States to make new laws or to alter or repeal existing ones." In Words and Phrases, vol. 5, p. 4086, it is said: "Wharton in his lexicon defines 'legislation' as follows: 'The act of giving or enacting laws—the power to make laws.'" The definition of Bouvier is adopted in Am. & Eng. Ency. of Law, vol. 2 (2d Ed.) p. 822, and adds to it, "To legislate is to give, pass or enact law or laws," citing authorities under notes 1, 2, and 3. In Cyc. vol. 25, p. 180, it is said the word "legislate" means to make laws, citing Abbott's Law Dictionary, and the definition of the word "legislation" is given as the "act of giving or enactment of laws," citing authorities to be found on that page. In the dictionaries the word is defined: "Legislate—to make or enact a law or laws. Legislation—act of Legislature; act of making or passing a law or laws; the enactment of laws; laws or statutes enacted." We do not think that the appointment of a committee to gather information and make recommendations in regard to amending, enacting, or repealing laws is "legislation," within the meaning of the word as used in our Constitution.

[13] However, it is insisted that, if the committee could be appointed at a special session, it took the joint action of both houses to create it. Section 37, art. 3, of the Constitution provides that "no bill shall be considered unless it has first been referred to a committee," etc. Does this mean a committee appointed by authority of both houses, or a committee appointed by either house? Since the organization of our government, each branch of the Legislature has assumed authority to appoint its own committees, without the concurring action of the other branch, and our Supreme Court in the case of Day Land & Cattle Company v. State, 68 Tex. 544, 4 S. W. 873, holds: "The answer of the defendant alleged that the act of February 25, 1879, was never legally passed, in that the bill was not referred to a committee of each house before it was acted upon. The answer shows that the bill was referred to a committee by the Senate, who reported upon it favorably before the Senate acted upon it, but that it was not referred to a committee by the House of Representatives before that body acted upon it. The Constitution provides that 'no bill shall be considered unless it has been first referred to a committee and reported thereon.' Const. art. 3, § 7. This does not in terms require a bill to be referred to a committee by each house before it can become a law. The requirement is that a bill shall be referred to a committee and

reported thereon' before it shall be considered. This, from the averments of the answer, was done, and we cannot, under the wording of the Constitution, say that more than this was necessary."

Thus it is seen that, when a bill is referred to a committee created by the Senate alone, it has been held a sufficient compliance with section 37 of article 3, thus recognizing the right of each branch of the Legislature to appoint its own committees; and section 11 of article 3 specifically provides that "each house may determine the rules of its own proceedings," and if the Senate in the exercise of its discretion deemed it essential to appoint a committee to gather information and report back recommendations in regard to the enactment of laws, we think it had the power and authority. This has been the construction of our Constitution by all of our Legislatures in the past, the construction that the Congress of the United States has given to the power possessed by each branch thereof, and the construction of the powers of each branch of the Legislature in almost every state of the Union, in the absence of constitutional inhibition; and we hold that the Senate had the authority and power to create the committee and authorize it to gather information and make recommendations on all subjects upon which the Legislature would have the right to enact laws.

[14] The second contention is that the questions asked relator sought information which the committee had no right to demand of him. The authority of the committee would be as broad as the Senate cared to make it, so long as it only sought information upon subjects which it had a right to legislate upon or to inquire into, and if the information could serve any useful purpose in enabling it to arrive at conclusions upon which to base recommendations for the passage of laws, or the amendment of laws, or the repeal of laws, or the performance of any other of its authorized functions, it would have the right to propound the interrogatories and gather the information. The information demanded must be such as would throw light upon subjects upon which the Legislature would have the right to enact laws or act upon. If this investigation went beyond that scope, relator would not be compelled to answer. And while not taking up each question asked, we think some of them were of a nature that would furnish information to the Legislature on questions which they in their legislative capacity would be authorized to regulate, and inasmuch as failure to answer one question within the scope of the power conferred on the committee would render relator subject to the power of the Senate to be punished for contempt, if it possesses the power to punish in this character of case, we do not deem it necessary to take up each question and discuss whether or not it came within the scope of the resolution passed, but will content ourselves with laying down the general rule that the authority of such committee to propound interrogatories and gather information would be as broad as the language of the resolution authorized, so long as it related to matters upon which the Legislature would be empowered to prohibit, regulate, or control, or had a right to inquire into, to enable it to properly perform its duty in matters upon which they would be authorized to act. We must presume that the Legislature, in petitioning the Governor to submit to it certain subjects for legislation, including the amendment of the election laws, acted in good faith, and believed that the Governor would do so, if the investigation developed the necessity therefor. And we must also presume that the Governor would have done so, if the information given him, either from the investigation or any other source, had convinced him that there was urgent need of such legislation. That he did not comply with the petition sent him, we again must presume that in the opinion of the Governor there was no such urgent demand or need for such legislation as to authorize him to keep the Legislature longer in extraordinary session.

Congress has passed an act making it punishable as a misdemeanor to fail to answer proper questions, and in the case of In re Chapman, 166 U. S. 661, 17 Sup. Ct. 677, 41 L. Ed. 1154, it is held:

"It is insisted that the Supreme Court of the District of Columbia, sitting as a criminal court, had no jurisdiction, that the questions were not authorized under the Constitution, and that the act of Congress under which petitioner was indicted and tried is unconstitutional. Laying section 103 out of view, we are of opinion that sections 102 and 104 [Rev. St. (U. S. Comp. St. 1901, p. 55)] were intended, in the language of the title of the original act of January 24, 1857, 'more effectually to enforce the attendance of witnesses, on the summons of either house of Congress, and to compel them to discover testimony.' To secure this result it was provided that when a person summoned as a witness by either house to give testimony or produce papers, upon any matter under inquiry before either house, or any committee of either house, willfully fails to appear, or, appearing, refuses to answer 'any question pertinent to the question under inquiry,' he shall be deemed guilty of a misdemeanor and punished accordingly. And it was also provided that when, under such circumstances, the facts are reported to either house, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, that the matter may be brought before the grand jury for their action. It is true that the reference is to 'any' matter under inquiry, and so on, and it is

suggested that this is fatally defective, because too broad and unlimited in its extent; but nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion (Lau Ow Bew v. United States, 144 U. S. 47, 58 [12 Sup. Ct. 517], 36 L. Ed. 340, 345), and we think that the word 'any,' as used in these sections, refers to matters within the jurisdiction of the two houses of Congress, before them for consideration and proper for their action, to questions pertinent thereto, and to facts or papers bearing thereon. When the facts are reported to the particular house, the question or questions may undoubtedly be withdrawn or modified, or the presiding officer directed not to certify; but if such a contingency occurs, or if no report is made or certificate issued, that would be matter of defense, and the facts of report and certificate need not be set out in an indictment under the statute. In this case we must assume that there was such report and certificate, and, indeed, we do not understand this to be controverted, as it could not well be in view of the Senate proceedings as disclosed by its journal and otherwise. Senate Journal, 53d Cong. 2d Sess. p. 238; Senate Rep. No. 477, 53d Cong. 2d Sess. p. 238; Rec. 53d Cong. 2d Sess. p. 6143.

"Under the Constitution the Senate of the United States has the power to try impeachments, to judge of the elections, returns, and qualifications of its own members, to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; and it necessarily possesses the inherent power of self-protection. According to preamble and resolutions the integrity and purity of the members of the Senate had been questioned in a manner calculated to destroy public confidence in the body, and in such respects as might subject members to censure or expulsion. The Senate, by the action taken, signifying its judgment that it was called upon to vindicate itself from aspersion and to deal with such of its members as might have been guilty of misbehavior and brought reproach upon it, obviously had jurisdiction of the subject-matter of the inquiry it directed and power to compel the attendance of witnesses, and to require them to answer any question pertinent thereto. And the pursuit of such inquiry by the questions propounded in this instance was not, in our judgment, in violation of the security against unreasonable searches and seizures protected by the fourth amendment.

"In Kilbourn v. Thompson, 103 U. S. 188, 26 L. Ed. 386, among other important rulings, it was held that there existed no general power in Congress, or in either house, to make inquiry into the private affairs of a citizen; that neither house could, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, investigate the affairs of that partnership, as a mere matter of private concern; and that consequently there was no authority in either house to compel a witness to testify on the subject. The case at bar is wholly different. Specific charges publicly made against senators had been brought to the attention of the Senate, and the Senate had determined that investigation was necessary. The subject-matter as affecting the Senate was within the jurisdiction of the Senate. The questions were not intrusions into the affairs of the citizen. They did not seek to ascertain any facts as to the conduct, methods, extent, or details of the business of the firm in question, but only whether that firm, confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any senator to buy or sell for him any of that stock, whose market price might be affected by the Senate's action. We cannot regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree connected with the alleged transactions, and as investigations of this sort are within the power of either of the two houses they cannot be defeated on purely sentimental grounds. The questions were undoubtedly pertinent to the subject-matter of the inquiry. The resolution directed the committee to inquire 'whether any senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate.' What the Senate might or might not do upon the facts, when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument; but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers.

"Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolutions did not specify that the proceedings were taken for the purpose of censure or expulsion, if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate. The resolutions adequately indicated that the transactions referred to were deemed by the Senate reprehensible and deserving of condemnation and punishment. The right to expel extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a member. 1 Story, Const. § 838. Reference is there made to the case of William Blount, who was expelled from the

Senate in July, 1797, for 'a high misdemeanor entirely inconsistent with his public trust and duty as a senator.' The offense charged against him, said Mr. Justice Story, was an attempt to seduce an American agent among the Indians from his duty, and to alienate the affections and confidence of the Indians from the public authorities of the United States, and a negotiation for services in behalf of the British government among the Indians. It was not a statutable offense, nor was it committed in his official character, nor was it committed during the session of Congress, nor at the seat of government. Commenting on this case, Mr. Sergeant says, in his work on Constitutional Law (2d Ed., p. 302): 'In the resolution, the Senate declared him guilty of a high misdemeanor, though no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case. And it seems no law existed to authorize such prosecution.' The two houses of Congress have several times acted upon this rule of law, and the cases may be found, together with debates on the general subject in both houses, of great value, in Smith's Digest of Decisions and Precedents, Senate Doc. No. 278, 53d Cong. 2d Sess. The reasons for maintaining the right inviolate are eloquently presented in the report of the committee in the case of John Smith, accused in 1807 of participating in the imputed treason of Aaron Burr. 1 Hall, Am. L. J. 459; Smith, Dig. p. 23.

"We cannot assume on this record that the action of the Senate was without a legitimate object, and so encroach upon the province of that body. Indeed, we think it affirmatively appears that the Senate was acting within its right, and it was certainly not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation was concluded. Doubtless certain general principles announced in Runkle v. United States, 122 U. S. 555 [7 Sup. Ct. 1141] 30 L. Ed. 1170, cited by petitioner's counsel as conclusive, were correctly set forth; but that case has not been approved in subsequent decisions on the same subject, and the presumptions in favor of official action have been held to preclude collateral attack on the sentences of courts-martial, though courts of special and limited jurisdiction. United States v. Fletcher, 148 U. S. 84 [13 Sup. Ct. 552] 37 L. Ed. 378; Swaim v. United States, 165 U. S. 553 [17 Sup. Ct. 448] 41 L. Ed. 823.

"Counsel contend with great ability that the law under consideration is necessarily subject to being impaled on one or the other of two horns of a dilemma, either inflicting a fatal wound. The one alternative is that the law delegates to the District of Columbia criminal court the exclusive jurisdiction and power to punish as contempt the acts denounced, and thus deprives the houses of Congress of their constitutional functions in the particular class of cases. The other alternative is that if the law should be interpreted as leaving in the houses the power to punish such acts, and vesting in addition jurisdiction in the District criminal court to punish the same acts as misdemeanors, then the law is invalid because subjecting recalcitrant witnesses to be twice put in jeopardy for the same offense, contrary to the fifth amendment.

"The refusal to answer pertinent questions in a matter of inquiry within the jurisdiction of the Senate, of course, constitutes a contempt of that body, and by the statute this is also made an offense against the United States. The history of congressional investigations demonstrates the difficulties under which the two houses have labored, respectively, in compelling unwilling witnesses to disclose facts deemed essential to taking definitive action, and we quite agree with Chief Justice Alvey, delivering the opinion of the Court of Appeals, 'that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence, to enable the respective bodies to discharge their legitimate functions,' and that it was to effect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each house thereof. We grant that Congress could not devest itself, or either of its houses, of the essential and inherent power to punish for contempt, in cases to which the power of either house properly extended; but, because Congress, by the act of 1857, sought to aid each of the houses in the discharge of its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved, and the statute is not open to objection on that account.

"Nevertheless, although the power to punish for contempt still remains in each house, we must decline to decide that this law is invalid because it provides that contumacy in a witness called to testify in a matter properly under consideration by either house, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States, who are interested that the authority of neither of their departments, nor of any branch thereof, shall be defied and set at naught. It is improbable that in any case cumulative penalties would be imposed, whether by way of punishment merely, or of eliciting the answers desired; but it is quite clear that the contumacious witness is not subjected to jeopardy twice for the same offense, since the same act may be an offense against one jurisdiction and also an offense against another, and indictable statutory offense may be punished as such, while the offenders may likewise be subjected to punishment for the

same acts as contempts, the two being diverso intuitu and capable of standing together. General Houston's Case, 2 Ops. Atty. Gen. 655 (Attorney General Butler); Rex v. Lord Ossulston, 2 Strange, 1107; Cross v. North Carolina, 132 U. S. 131 [10 Sup. Ct. 47] 33 L. Ed. 287; Re Debs, 158 U. S. 564 [15 Sup. Ct. 900] 39 L. Ed. 1092; State v. Woodfin, 27 N. C. 199, 42 Am. Dec. 161; Yates v. Lansing, 9 Johns. [N. Y.] 395, 6 Am. Dec. 290; State v. Williams, 2 Speers [S. C.] 26; Foster v. Com., 8 Watts & S. [Pa.] 77. In our opinion the law is not open to constitutional objection, and the record does not exhibit a case in which, on any ground, it can be held that the Supreme Court of the district, sitting as a criminal court, had no jurisdiction to render judgment."

[15] In the fourth ground relator assails the good faith of the Senate in appointing the committee. That phase of the question we do not deem it the province of the court to discuss. So long as the legislative branch of the government acts within the scope of the authority vested in it, its good or bad faith in the passage of laws or resolutions is no more a matter to be submitted to our judgment than would the good faith of the court in rendering a decision in this case be a proper subject for legislative criticism. As to the motives, objects, and purposes of the Senate in passing this resolution and in the appointment of this committee we have no right to inquire, if they had the legal right to appoint a committee to gather information to enable them, as they assert, to correct evils they claim existent in present laws on any subject. Should a committee thus appointed seek to go beyond the scope of authority conferred by the resolution creating it, or should they seek to require a citizen of this state to answer questions in regard to matters they had no right to inquire into, or elicit information on subjects not embraced within their power to regulate by legislation, this court could and would protect the citizen in all the rights guaranteed to him under the Constitution of this state.

[16] The third ground has been the question that has been the cause of much study, of grave thought, and anxious solicitude to arrive at a correct judgment. Article 3, § 15, provides: "Each house may punish by imprisonment, during its session, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings." That relator has been guilty of disrespectful or disorderly conduct in the presence of either house during its session none assert; but it is insisted by respondent that, by refusing to answer the questions propounded to him by its committee, relator has been guilty of "obstructing the proceedings" of the Senate, and as one of the main cases relied on by the respondent to sustain this contention is the case of In re Chapman, 166 U. S. 661, 17 Sup. Ct. 677, 41 L. Ed. 1154, we have heretofore copied pretty fully from that opinion, for in it it is held that the Senate alone had the power to appoint a committee to investigate a matter within the powers conferred on it, and to gather information to enable them to act intelligently in matters upon which they were authorized to deal, even though the purpose of the inquiry was not disclosed by the resolution. Respondent also insists that it as clearly announces that a failure to answer a proper inquiry would be a contempt of the Senate, and the Senate would have the right to punish for such contempt. To this we do not entirely agree. In the opinion it is not claimed that the Constitution of the United States gave to the Senate this power to punish for such contempt, but only that in a proper case, where the Senate would under its inherent power be authorized to punish, this would not render unconstitutional and void a statute which authorized the punishment as a misdemeanor by the courts of the country for failure to answer proper questions.

Mr. Cooley, in his work on Constitutional Limitations (page 193), says that it has been held that a refusal to appear or to testify before a legislative committee would be a contempt of the House, and on page 191 he says: "Each house may also punish contempts of its authority by other persons, where they are committed in its presence, or where they tend directly to embarrass or obstruct its legislative proceedings; and it requires for the purpose no express provision of the Constitution conferring the authority. It is not very well settled what are the limits to this power," but that power was sustained in the case of Anderson v. Dunn, 6 Wheat. 204, 5 L. Ed. 242. Since the rendition of this opinion the doctrine laid down has been questioned and rejected as to some of its reasoning in the case of Kilbourn v. Thompson, 103 U. S. 168, 26 L. Ed. 377. And he adds: "But in America the authority of legislative bodies in this regard is much less extensive than in England, and we are in danger, perhaps, of being misled by English precedents. The Parliament, before its separation into two bodies, was a high court of judicature, possessed of the general power, incident to such a court, of punishing contempts, and after the separation the power remained with each body, because each was considered to be a court of judicature and exercised the functions of such a court. American legislative bodies have not been clothed with the judicial function, and they do not, therefore, possess the general power to punish for contempt; but, as incidental to their legislative authority, they have the power to punish as contempts those acts of members or others which tend to obstruct the performance of legislative duty, or to defeat, impede, or embarrass the exercise of legislative power"—and then cites us to the case of Kilbourn v.

Thompson, 103 U. S. 168, 26 L. Ed. 377. In this case Kilbourn had refused to answer certain questions propounded to him by a committee appointed by Congress, and had been adjudged guilty of contempt, and sentenced to imprisonment, and the right of Congress, or either branch thereof, to so punish in the premises, is discussed. It is said in this case:

"The argument before us has assumed a very wide range, and includes the discussion of almost every suggestion that can well be conceived on the subject. The two extremes of the controversy are: The proposition on the part of the plaintiff, that the House of Representatives has no power whatever to punish for a contempt of its authority; and, on the part of defendants, that such power undoubtedly exists, and, when that body has formally exercised it, it must be presumed that it was rightfully exercised. This latter proposition assumes the form of expression sometimes used with reference to courts of justice of general jurisdiction: That, having the power to punish for contempts, the judgment of the House that a person is guilty of such contempt is conclusive everywhere. Conceding for the sake of the argument that there are cases in which one of the two bodies, that make together the Congress of the United States, may punish for contempt of its authority, or disregard of its orders, it will scarcely be contended by the most ardent advocate of their power in that respect that it is unlimited. The power of Congress itself, when acting through the concurrence of both branches, is a power dependent solely on the Constitution. Such powers as are not found in that instrument, either by express grant or by fair implication from what is granted, are 'reserved to the states respectively, or to the people.' Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either house separately, as in the case of impeachments. No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains, in the provision that no 'person shall be deprived of life, liberty or property, without due process of law,' the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the right of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established. An act of Congress, which proposed to adjudge a man guilty of a crime and inflict the punishment, would be conceded by all thinking men to be unauthorized by anything in the Constitution. That instrument, however, is not wholly silent as to the authority of the separate branches of Congress to inflict punishment. It authorizes each house to punish its own members. The third clause of the fifteenth section of the first article declares that 'Each house may determine the rules of its proceedings, punish its members for disorderly behavior and, with the concurrence of two-thirds, expel a member.' And in the clause just preceding it is said that they 'may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.' These provisions are equally instructive in what they authorize and in what they do not authorize. There is no express power in that instrument conferred on either house of Congress to punish for contempts.

"The advocates of this power have, therefore, resorted to an implication of its existence founded on two principal arguments. These are: (1) Its existence by the House of Commons of England, from which country we, it is said, have derived our system of parliamentary law; and (2) the necessity of such a power to enable the two houses of Congress to perform the duties and exercise the powers which the Constitution had conferred on them. That the power to punish for contempt has been exercised by the House of Commons in numerous instances is well known to the general student of history, and is authenticated by the rolls of the Parliament. And there is no question but that this has been upheld by the courts of Westminster Hall. Among the most notable of these latter cases are the judgments of the Court of King's Bench in the Case of Brass Crosby, Lord Mayor of London, 3 Wils. 188, decided in the year 1771; the case of Burdett v. Abbott, 14 East, 1, in 1811, in which the opinion was delivered by Lord Ellenborough, and in the case of Sheriff of Middlesex, in 11 Ad. & E. 273, in 1840, opinion by Lord Denman, Chief Justice. It is important, however, to understand on what principle this power in the House of Commons rests, that we may see whether it is applicable to the two houses of Congress, and, if it be, whether there are limitations to its exercise. While there is, in the adjudged cases in the English courts, little agreement of opinion as to the extent of this power, and the liability of its exercise to be inquired into by the courts, there is no difference of opinion as to its origin. This goes back to the period when the bishops, the lords, and the knights and burgesses met in one body, and were, when so assembled, called the High Court of Parliament. They were not only called so, but the assembled Parliament exercised the highest functions of a court of judicature, representing in that respect the judicial authority of the king in his Court of Parliament. While this body enacted laws, it also rendered judgments in matters of private right, which, when approved by the king, were recognized as valid. Upon the sepa-

ration of the Lords and Commons into two separate bodies, holding their sessions in different chambers, and hence called the House of Lords and the House of Commons, the judicial function of reviewing by appeal the decisions of the courts of Westminster Hall passed to the House of Lords, where it has been exercised without dispute ever since. To the Commons was left the power of impeachment, and, perhaps, others of a judicial character, and jointly they exercised, until a very recent period, the power of passing bills of attainder for treason and other high crimes which are in their nature punishment for crime declared judicially by the High Court of Parliament of the kingdom of England.

"It is upon this idea that the two houses of Parliament were each courts of judicature originally, which, though devested by usage, and by statute, probably, of many of their judicial functions, have yet retained so much of that power as enables them, like any other court, to punish for a contempt of these privileges and authority, that the power rests. In the case of Burdett v. Abbott, already referred to as sustaining this power in the Commons, Mr. Justice Bailey said, in support of the judgment of the Court of King's Bench: 'In an early authority upon that subject, in Lord Coke, 4 Inst, 23, it is expressly laid down that the House of Commons has not only a legislative character and authority, but is also a court of judicature; and there are instances put there in which the power of committing to prison for contempt has been exercised by the House of Commons, and this, too, in cases of libel. If then (said he) the House be a court of judicature, it must, as is in a degree admitted by plaintiff's counsel, have the power of supporting its own dignity as essential to itself; and without power of commitment for contempts it could not support its dignity.' In the opinion of Lord Ellenborough in the same case, after stating that the separation of the two houses of Parliament seems to have taken place as early as the 49th of Henry III, about the time of the battle of Evesham, he says the separation was probably effected by a formal act for that purpose by the king and Parliament. He then adds: 'The privileges which have since been enjoyed, and the functions which have been uniformly exercised by each branch of the Legislature, with the knowledge and acquiescence of the other house and of the king, must be presumed to be privileges and functions which then—that is, at the very period of separation—were statutably assigned to each.' He then asks: 'Can the High Court of Parliament, or either of the two houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts, which is acknowledged to belong, and is daily exercised as belonging, to every superior court of law, of less dignity undoubtedly than itself?' This power is here distinctly placed on the ground of the judicial character of Parliament, which is compared in that respect with the other courts of superior jurisdiction, and is said to be of a dignity higher than they.

"In the earlier Case of Crosby, Lord Mayor of London, De Gray, Chief Justice, speaking of the House of Commons, which had committed the lord mayor to the Tower of London for having arrested by judicial process one of its messengers, says: 'Such an assembly must certainly have such authority, and it is legal, because necessary. Lord Coke says they have a judicial power; each member has a judicial seat in the House. He speaks of matters of judicature of the House of Commons.' Mr Justice Blackstone, in concurring in the judgment, said: 'The House of Commons is a supreme court, and they are judges of their own privileges and contempts, more especially with reference to their own members.' Mr. Justice Gould also laid stress upon the fact that the 'House of Commons may be properly called judges,' and cites 4 Coke's Inst. 47, to show that an alien cannot be elected to Parliament, because such a person can hold no place of judicature.'

"In the celebrated case of Stockdale v. Hansard, 9 Ad. & Ell. 1, decided in 1838, this doctrine of the omnipotence of the House of Commons in the assertion of its privileges received its first serious check in a court of law. The House of Commons had ordered the printing and publishing of a report of one of its committees, which was done by Hansard, the official printer of the body. This report contained matter on which Stockdale sued Hansard for libel. Hansard pleaded the privilege of the House, under whose orders he acted, and the question on demurrer was: Assuming the matter published to be libelous in its character, did the order of the House protect the publication? Sir John Campbell, Attorney General, in an exhaustive argument in defense of the prerogative of the House, bases it upon two principal propositions, namely, that the House of Commons is a court of judicature, possessing the same right to punish for contempt that other courts have, and that its powers and privileges rest upon the lex parliamenti, the laws and customs of Parliament. These, he says, and cites authorities to show it, are unknown to the judges and lawyers of the common-law courts, and rest exclusively in the knowledge and memory of the members of the two houses. He argues, therefore, that their judgments and orders on matters pertaining to these privileges are conclusive, and cannot be disputed or reviewed by the ordinary courts of judicature. Lord Denman, in a masterly opinion, concurred in by the other judges of the King's Bench, ridicules the idea of the existence of a body of

laws and customs of Parliament unknown and unknowable to anybody else but the members of the two houses, and holds with an incontrovertible logic that, when the rights of the citizen are at stake in a court of justice, it must, if these privileges are set up to his prejudice, examine for itself into the nature and character of those laws, and decide upon their extent and effect upon the rights of the parties before the court. While admitting, as he does in the subsequent Case of Sheriff of Middlesex, supra, that when a person is committed by the House of Commons for a contempt in regard to a matter of which that House had jurisdiction, no other court can relieve the party from the punishment which it may lawfully inflict, he holds that the question of the jurisdiction of the House is always open to the inquiry of the courts in a case where that question is properly presented.

"But perhaps the most saatisfactory discussion of this subject, as applicable to the proposition that the two houses of Congress are invested with the same power of punishing for contempt, and with the same peculiar privileges, and the same power of enforcing them, which belonged by ancient usage to the houses of the English Parliament, is to be found in some recent decisions of the Privy Council. That body is by its constitution vested with authority to hear and decide appeals from the courts of the provinces and colonies of the kingdom. The leading case is that of Kielley v. Carson and Others, 4 Moore (P. C.) 63, decided in 1841. There were present at the hearing, Lord Chancellor Lyndhurst, Lord Brougham, Lord Denman, Lord Arbinger, Lord Cottenham, Lord Campbell, Vice Chancellor Shadwell, the Chief Justice of the Common Pleas, Mr. Justice Erskine, Dr. Lushington, and Mr. Baron Parke, who delivered the opinion, which seems to have received the concurrence of all the eminent judges named. Measuring the weight of its authority by the reputation of the judges who sat in the case and agreed to the opinion, it would be difficult to find one more entitled on that score to be received as conclusive on the points which it decided. The case was an appeal from the Supreme Court of Judicature of Newfoundland. John Kent, one of the members of the House of Assembly of that island, reported to that body that Kielley, the appellant, had been guilty of a contempt of the privileges of the House in using towards him reproaches, in gross and threatening language, for observations made by Kent in the House, adding, 'Your privilege shall not protect you.' Kielley was brought before the House and added to his offense by boisterous and violent language, and was finally committed to jail under an order of the House and the warrant of the Speaker. The appellant sued Carson, the Speaker, Kent, and other members, and Walsh, the messenger, who pleaded the facts above stated and relied on the authority of the House as sufficient protection. The judgment of the court of Newfoundland was for the defendants, holding the plea good. This judgment was supported in argument before the Privy Council on the ground that the Legislative Assembly of Newfoundland had the same parliamentary rights and privileges which belonged by usage to the Parliament of England, and that, if this were not so, it was a necessary incident to every body exercising legislative functions to punish for contempt of its authority. The case was twice argued in the Privy Council, on which its previous judgment in the case of Beaumont v. Barrett, 1 Moore (P. C.) 59, was much urged, in which both those propositions had been asserted in the opinion of Baron Parke. Referring to that case as authority for the proposition that the power to punish for a contempt was incident to every legislative body, the opinion of Baron Parke in the later case uses this language: 'There is no decision of a court of justice, nor other authority, in favor of the right, except that of the case of Beaumont v. Barrett, decided by the judicial committee; the members present being Lord Brougham, Mr. Justice Bosanquet, Mr. Justice Erskine, and myself. Their lordships do not consider that case as one by which they ought to be bound in deciding the present question. The opinion of their lordships, delivered by myself, immediately after the argument was closed, though it clearly expressed that the power was incidental to every legislative assembly, was not the only ground on which that judgment rested, and, therefore, was, in some degree, extrajudicial; but, beside this, it was stated to be founded entirely on the dictum of Lord Ellenborough in Burdett v. Abbott, which dictum, we all think, cannot be taken as authority for the abstract proposition that every legislative body has the power of committing for contempt. The observation was made by his lordship with reference to the peculiar powers of Parliament, and ought not, we all think, to be extended any further. We all, therefore, think that the opinion expressed by myself in Beaumont v. Barrett ought not to affect our decision in the present case, and, there being no other authority on the subject, we decide, according to the principle of the common law, that the House of Assembly have not the power contended for. They are a local legislature, with every power reasonably necessary for the exercise of their functions and duties; but they have not, what they erroneously supposed themselves to possess, the same exclusive privileges which the law of England has annexed to the House of Parliament.' In another part of the opinion the subject is thus disposed of: 'It is said, however, that this power belongs to the House of Commons of England; and this, it is contended, affords us authority for holding that it belongs, as a legal incident by the common law, to an assembly with analogous functions. But the reason why the House of

Commons has this power is, not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the lex et consuetudo parliamenti, which forms a part of the common law of the land, and according to which the High Court of Parliament before its division, and the Houses of Lords and Commons since, are invested with many privileges, that of punishment for contempt being one.' The opinion also discusses at length the necessity of this power in a legislative body for its protection, and to enable it to discharge its law-making functions, and decides against the proposition. But the case before us does not require us to go so far, as we have cited it to show that the powers and privileges of the House of Commons of England, on the subject of punishment for contempts, rest on principles which have no application to other legislative bodies, and certainly can have none to the House of Representatives of the United States, a body which is in no sense a court, which exercises no functions derived from its once having been a part of the highest court of the realm, and whose functions, so far as they partake in any degree of that character, are limited to punishing its own members and determining their election. The case, however, which we have just been considering, was followed in the same body by Fenton v. Hampton, 11 Moore (P. C.) 347, and Doyle v. Falconer, L. R. 1 P. C. 328, in both of which, on appeals from other provinces of the kingdom, the doctrine of the case of Kielley v. Carson is fully reaffirmed.

"We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or breach of its privileges can derive no support from the precedents and practices of the two houses of the English Parliament nor the adjudged cases in which the English courts have upheld these practices. Nor can it be said that, taking what has fallen from the English judges, and especially the later cases, on which we have just commented, that much aid is given to the doctrine that this power exists, as one necessary to enable either house of Congress to exercise successfully their function of legislation. This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function. As we have already said, the Constitution expressly empowers each house to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the house for the preservation of order. So, also, the penalty which each house is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject. Each house is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment, at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature. The House of Representatives has the sole right to impeach officers of the government, and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses and their answer to proper questions in the same manner and by the use of the same means that courts of justice can in like cases. Whether the power of punishment in either house by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either house, unless his testimony is required in a matter into which that house has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen. It is believed to be one of the chief merits of the American system of written constitutional law that all the powers intrusted to governments, whether state or national, are divided into the three grand departments of the executive, the legislative, and the judicial; that the functions appropriate to each of these branches of government shall be vested in a separate body of public servants; and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of the system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. * * *

"The case of Anderson v. Dunn was decided before the case of Stockdale v. Hansard and the more recent cases in the Privy Council to which we have referred. It was decided as a case of the first impression in this court, and undoubtedly under pressure of the strong rulings of the English courts, in favor of the privileges of the two Houses of Parliament. Such is not the doctrine, however, of the English courts to-day. In the case of Stockdale v. Hansard, 9 Ad. & El. 1, Lord Denman says: 'The House [of Commons] is not a court of law at all in the sense in which that term can alone be properly applied here. Neither originally nor by appeal

can it decide a matter in litigation between two parties; it has no means of doing so; it claims no such power. Power of inquiry and accusation it has, but it decides nothing judicially, except when it is itself a party, in cases of contempt. * * * Considered merely as resolutions or acts, I have yet to learn that this court is to be restrained by the dignity or the power of any body, however exalted, from fearlessly, though respectfully, examining their reasonableness and justice, when the rights of third persons in litigation before us depend upon it.' Again he says: 'Let me suppose, by way of illustration, an extreme case: The House of Commons resolves that any one wearing a dress of a particular manufacture is guilty of a breach of privilege, and orders the arrest of such persons by the constable of the parish. An arrest is made and action brought, to which the order of the House is pleaded as a justification. In such a case the plaintiff's counsel would insist on the distinction between privilege and power, and no lawyer can seriously doubt that it exists; but the argument confounds them, and forbids us to inquire into any particular case, whether it ranges under the one or the other. I can find no principle which sustains this.' The case of Kielley v. Carson, in 4 Moore (P. C.) 63, from which we have before quoted so largely, held that the order of the assembly, finding the plaintiff guilty of a contempt, was no defense to the action for imprisonment. And it is to be observed that the case of Anderson v. Dunn was cited there in argument.

"But we have found no better expression of the true principle on this subject than the language of Mr. Justice Hoar, in the Supreme Court of Massachusetts, reported in 14 Gray, 226, 74 Am. Dec. 676, in the case of Burnham v. Morrissey. That was a case in which the plaintiff was imprisoned under an order of the House of Representatives of the Massachusetts Legislature for refusing to answer certain questions as a witness and to produce certain books and papers. The opinion, or statement, rather, was concurred in by all the court, including the venerable Chief Justice Shaw. 'The House of Representatives,' says the court, 'is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court. That House is not the Legislature, but only a part of it, and is therefore subject in its action to the laws in common with all other bodies, officers, and tribunals within the commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because, living under a written Constitution, no branch or department of the government is supreme, and it is the province and duty of the judicial department to determine, in cases regularly brought before them, whether the powers of any branch of the government, and even those of the Legislature in the enactment of laws, have been exercised in conformity to the Constitution, and, if they have not, to treat their acts as null and void. The House of Representatives has the power under the Constitution to imprison for contempt, and the power is limited to the cases expressly provided for by the Constitution, or to cases where the power is necessarily implied from these constitutional functions, and to the proper performance of which it is essential.' In this statement of the law, and in the principles there laid down, we fully concur."

Relator and respondent cite a number of authorities, but we do not deem it necessary to discuss each one of them, but have copied extensively from the Chapman Case, which presents clearly the contention of respondent, and the Kilbourn Case, which presents the contention of relator, and under the holding in the cases, and the other cases, we are of the opinion that a Legislature, nor either branch thereof, has any inherent power, under a Constitution like the one in force in this state, to punish one by imprisonment for contempt. One who is only partially familiar with the history of the English-speaking people would recognize that our legislative bodies are not clothed with similar powers as possessed by the English Parliament. In the development of a government in England, all power at one time was supposed to be vested in the king, and whatsoever he declared became and was the law of the land, and he alone construed and enforced the law through such instrumentalities as he saw proper to employ. Even the right of the people to have a parliament or legislative body was of slow growth, and was accomplished in the end by patriotic men at different periods wrenching this power by degrees from the sovereign king. The establishment of the courts, their power and jurisdiction, free from the domination of the king, was likewise of slow growth, and was accomplished by men on the battle field yielding up their lives and shedding their blood that a government might be founded, in which one man alone would not be supreme arbiter of their lives, their weal or their woe, both as regards their person and their property. In the development of Parliament, the king at times but used it as an instrument to further his will, and, instead of being a body representative of the citizenship of the land, it was used as a body by which again might be usurped the powers wrung from the king on the battle field, and was also used as a body to punish men who had the courage to oppose the usurpation by the king of the rights granted at Runnymede, and on other battle fields, and at other periods. Parliament at one time could only sit at the will of the king, and there were periods when

it met very irregularly, and at times years would pass when there would be no session. In the course of time, Parliament, in a measure, became freed from the domination of the king, and its growth and power have developed gradually, until now, in many matters, its will is superior to that of the sovereign. The development of the power of the courts was also gradual, but in the course of time the judiciary in that country has also become freed from a domination by the king; but at the time of the Declaration of Independence by the colonies in 1776 the powers and jurisdiction of Parliament, and the powers and jurisdiction of the courts, were not so well defined in England even as they are to-day. The fact that the English Parliament at one time would constitute itself a court to try men for offenses against the law of the land, and under its judgments inflict even the death penalty, is no argument that the Congress of the United States, or the Legislature of any state in this Union, has that power, or could usurp that right. At the time of the framing of the Constitution of the United States, Congress was granted certain powers. A judicial system was established and granted certain jurisdiction, and the duties of the ruler or executive officer, whom we termed President, were clearly defined. In fact, we founded a new system of government, and, while the common law was made the rule of decision in all the courts, yet the laws of England, in so far as they were antagonistic to our form of government, became no part of our system. When the colonies had gained their independence, in framing a Constitution they provided for three separate and distinct powers of government, legislative, executive, and judicial.

"Article 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist in a Senate and House of Representatives.

"Art. 2. The executive power shall be vested in a President of the United States of America.

"Art. 3. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Sovereignty, which had theretofore been lodged in the king, was reserved by the citizenship, who had bared their breasts and shed their blood that a republican government might be here founded. When this Constitution was submitted to the people for ratification, they were not satisfied with the safeguards therein contained, and before its final ratification and adoption amendments thereto were required to be adopted. Knowing that in the mother country contest between Catholicism and Protestantism had been the cause of much friction, and at times war, and that lives had been forfeited to the zeal of men who desired a creed established by law, it was provided that Congress shall make no law respecting an establishing of religion or prohibiting the free exercise thereof. That when the people had formerly assembled and petitioned the king for redress of wrongs, that those engaged had become marked men, and their lives became forfeited on slight or no provocation, it was provided, "The right of the people to peaceably assemble and to petition the government for a redress of grievances" shall be inviolate, and no law should be passed in regard thereto, and it was also provided that no law should be passed abridging the freedom of speech or of the press. Among many other things required to be added by amendment was that no warrant should issue, but upon probable cause, supported by oath or affirmation, particularly describing the persons or things to be seized; that a person shall not be put twice in jeopardy for the same offense, nor be deprived of life or liberty without due process of law, and in all criminal prosecutions the accused shall be tried by an impartial jury in the state or district wherein the crime shall have been committed; to be informed of the nature of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses, and to have the assistance of counsel for his defense. These were rights, among others, that neither the legislative, executive, nor judicial department of government should have the right to take away from the citizenship of the different states of the Union. The people and their forefathers, having suffered from tyranny, were determined that neither the department to which they had confided the legislative power, nor the department to which they had confided the judicial power, nor the department to which they had confided the executive power, should have the authority or right to imprison any citizen except upon a written accusation informing him of the accusation against him. He should have a fair trial, and have the assistance of counsel. Yet, in some of the decisions holding that the Legislature has the right to imprison for contempt, it is held that the accused has not the right to be represented by counsel, and this right has been refused. It is well enough to look back to the landmarks occasionally before drifting too far away, and while this by some may be said not to be a criminal prosecution, yet the Congress of the United States has so defined it and made it punishable as such, and under the decree entered he would be deprived of his liberty for a short period of time, and the stigma and disgrace of having occupied a cell in prison would thereafter attach to his good name. The length of time one must serve is not all that is to be considered. One who has before borne an irreproachable character may by an hour's confinement in jail have it forever

blasted, and the children who are to come after him suffer because thereof.

When Texas threw off the Mexican yoke, it also adopted a Constitution, in which sovereignty was reserved to the people, and this supreme power in government provided in the first article "that the powers of government shall be divided into three departments, vis., legislative, executive, and judicial," and added, "which shall forever remain separate and distinct." The Legislature is but the representative of this sovereign people in performing their legislative duties, and they are supreme in their department, except in so far as they are inhibited from legislating in that instrument. The executive is but the representative of sovereignty in his department, while the judicial is likewise but the representative of sovereignty in its department, and each is likewise supreme in the department confided to it, except in so far as that instrument says "thou shalt not," either in express words or by necessary implication; and in this instrument, in section 16 of article 1, the power to punish by imprisonment was given to the Legislature and to each house thereof as to any person, not a member, who should be guilty of any disrespect to the House by disorderly conduct, during its sessions. Under it no right was given to punish for obstructing its proceedings. In the Constitution of 1876, the wording of this provision was so changed as to include the power to punish also "any person obstructing any of its proceedings." In this Constitution of 1876 the first article contains what is termed the Bill of Rights, and which rights were excepted out of the general powers of government; neither of the three departments of government having the right to alter, amend, or abridge those rights. Article 2 provides "that the powers of government shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." The power to punish for contempt being a judicial power, requiring a judicial ascertainment of fact by a tribunal, and the adjudgment of punishment, the legislative department has no inherent power, as it is called, to exercise this judicial power, for this power is conferred upon the judicial department by this provision of the Constitution, unless in the Constitution is found some provision which expressly permits the legislative department to exercise it. In exercising judicial powers, the legislative department must look to the Constitution for permission so to do, and, if it is not found therein, it is prohibited from exercising that power; for in that instrument it is declared that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein permitted."

[17] So we must look alone to section 15 of article 3, to judge if permission is given the legislative department of the government to exercise this judicial power in cases of this character. That this permission is given the legislative department under this section of article 3 of the Constitution, during its sessions, to punish as for contempt for disrespectful or disorderly conduct in its presence, or for obstructing its proceedings, is plain, and the only question to be determined is: What is meant by the words "obstructing its proceedings," as used in our Constitution? Section 12 of article 3 provides: "Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall at the desire of any three members present be entered in the journal." Respondent insists that these words embrace, not only the proceedings of each house as a whole when in session, but also embraces any matter that may take place before any standing committee of either house, or special committee appointed by either house to conduct an investigation or attend to any other matter wherein they would be authorized. But is this the construction that the Legislature itself has heretofore placed on these words? Has it ever published in its journal, as a part of its "proceedings," the proceedings, if you so term it, of the various special committees heretofore appointed by our Legislature at its different sessions? It has always been held that a construction placed by a department of government, of long standing, will and should have strong persuasive force in determining the construction of given words used in regard to that department. We think that it has been almost an unbroken rule of construction by both houses that the proceedings had before a special committee were not a part of their proceedings, and have never been published in the journal, except in those instances where specifically authorized by a resolution passed to that effect, and in this instance the committee did not report its proceedings or recommendations to this session of the Senate, but was authorized to file its recommendations and the evidence taken by it with the Secretary of State at a date subsequent to the adjournment of the Legislature, thus conclusively showing that the Senate did not construe the recommendations and the evidence taken as a part of the "proceedings" of that session of the Senate; for, if it was a part of the proceedings of that session of the Legislature, then at the adjournment of the Legislature, which was fixed by the Constitution, all power to act as a Senate ceased, and the recommenda-

tions written by the committee at a date subsequent to the adjournment of the Legislature can by no construction be taken as a part of the proceedings of the last special session. While, as we are informed by the record, on or about October 1st, the Senate committee filed its recommendations with the Secretary of State, also a copy of the evidence, yet the House committee had not filed any report at the time of the submission of this case, although the Legislature adjourned the latter part of last August. It will not do to say that the word "proceedings" has one meaning in section 12, and another meaning in section 15, of the same article of the Constitution. Investigating committees have been appointed to sit in vacation, and go from place to place, and hold sessions, while the Constitution provides that the Legislature shall meet at such places as is provided by law, and the law of this state provides that its sessions shall be held at the seat of government, except in the instances named in the law.

It is earnestly insisted that this construction will paralyze one department of the government, the legislative department, and that it is useless to hold that they have the right to appoint committees and seek and obtain information to enable them to legislate intelligently, and yet deny to them the right to enforce such right by punishing those who prove recalcitrant and defy their authority. We do not think this the result of such holding; but, if it were, and it is so written in the Constitution, we are powerless to prevent it, for that instrument is the supreme law of the land, and not only limits the jurisdiction and power of the legislative department, but it also limits the power, authority, and jurisdiction of the judicial department as well. The writer of this opinion has, and always will, uphold the legislative department in the exercise of all power conferred on it by the Constitution, and recognizes and fully appreciates that the judicial department has no right nor power to interfere with that department in the passage of laws, or in the exercise of its other powers, nor as to its wisdom as to the provisions contained in such laws or other proceedings wherein it acts within the scope of the power confided in it by the Constitution; but we cannot uphold that or any other department of government in the exercise of any power not confided to it, but specifically confided to another department of government, especially so when the Constitution in article 2 specifically prohibits it from exercising such power. But, as hereinbefore stated, we do not think that denying to the legislative department the power to punish for contempt in this character of proceedings will be hurtful or harmful, nor prevent it from obtaining the necessary information. It can pass laws making it a penal offense, as the Congress of the United States has done.

If we had held that it had the power, it would be limited, as the Constitution prohibits it from inflicting more severe punishment than 48 hours' imprisonment, and this penalty is entirely adequate to secure, in our opinion, the results desired; that is, that all citizens be compelled to furnish all information to the legislative department which will enable it to legislate in all matters wherein they are authorized to pass laws for the best interests of the state and its citizens. A willful refusal to furnish information, which the legislative department is authorized to demand, should be punishable by so severe a penalty as none would dare to refuse to comply, and the Legislature has the authority and power to enact such law, and in our opinion should do so. It is true that in a contest between a citizen and the Legislature as to whether or not the information sought related to a matter on which the Legislature had a right to demand information, and whether it related to a matter which would be helpful and beneficial to that department in the enactment of laws, or redress of grievances, would, under such a law, be passed on by a different tribunal; and, as to the wisdom of having a separate, distinct, and impartial tribunal to pass on these contests between the citizen and the Legislature is for the best, we are not prepared to justify, nor do we condemn. We believe, though, it will result in the Legislature securing all the information it is entitled to receive, and at the same time protect the citizen from being compelled to disclose, at the behest of any one, his private affairs, or affairs about which the government has no right to inquire into or legislate on, and certainly cannot and will not result in any injury to the state, and will also amply protect the individual.

The Kilbourn Case, hereinbefore cited, amply illustrates that the legislative department at times may overstep its bounds, and punish individuals for refusing to furnish information which it had no right to demand; and while the legislative department did not suffer by reason of this case of mistaken judgment, yet Kilbourn was sent to a felon's cell, and the sergeant at arms who confined him therein was made to suffer. It seems to us that, if courts are to be permitted to pass on the question of whether or not the legislative department is seeking information beyond the scope of its authority, the courts should do so before any punishment is inflicted on the person denying the right of the legislative department to such information, and also before the person acting under the orders of the legislative department has, by carrying into effect its decrees, by his conduct rendered himself liable to punishment in the form of a suit for damages or otherwise. In the matters in which it is clear that the Constitution has conferred the power to imprison for contempt, no such results can follow;

but in those cases where a contention arises as to whether the Legislature is seeking to invade the rights reserved to the citizen in the Bill of Rights and the Constitution, between the Legislature and a citizen, a tribunal to arbitrate and judge the matter, which should, and in our opinion always will, protect both the rights of the citizen and yet secure to the legislative department all information to which it is entitled, and enforce all power confided to it, may be best—at least, we are of opinion our Constitution has so provided.

We do not wish to be understood as holding that in no case is the Legislature not authorized to punish for contempt. In a number of cases judicial power is confided in that branch of government, all of which are enumerated in the Constitution; but in all cases wherein it is not so confided by the Constitution, it is prohibited by article 2 from exercising such power. As hereinbefore stated, that our legislative department has all power possessed by the English Parliament, as stated by some courts, cannot be maintained under the Constitution of this state. The powers of the English government by no law, decree of the king, Parliament, or any other body authorized to speak for the English people, have ever been divided into three separate and distinct departments, with the limitation that no one of the departments should exercise the power attached to the other department. The scope of authority of the English Parliament had never, at the time of our independence, been defined by law or custom, so far as our information goes, while the scope of authority of our legislative bodies is defined by written Constitutions, which provisions are binding on all alike. If we confer on a department a power possessed by a department of the English government, or enact a law in force in England prior to our independence, we may and should look to the construction given that power or law in England, that we may arrive at what the intention was in adopting such provisions, and our laws so provide. The English Parliament was at one time the Supreme Court of England, and exercised the privilege and right to annul the judgments and decrees of its courts, and to sit as a trial court where men were charged with crime, and affix the punishment, even to taking life. This power certainly was never and is not now possessed by our legislative bodies. In framing our organic law the fathers of this Republic intended to and did place around human life and human liberty many safeguards theretofore not possessed by them as English subjects, and, too, provided that, before the citizen could be deprived of either his liberty or his property, it must be by due process of the law of the land, and in accordance with its provisions, and no department of government could arbitrarily take either from him or exercise jurisdiction not given it. If in so doing the sovereign people took from any department of government powers and jurisdiction over matters which experience has shown it would have been best should not have been done, the legislative department, the judicial, or the executive department, cannot change that provision. There is but one to whom the appeal can be made, and that is the sovereign people. They, and they alone, can change the organic law.

Holding, as we do, that under our Constitution and form of government the legislative department has no inherent power to punish for contempt, but it derives its power so to do from the Constitution alone in instances in which it can exercise that power, and also holding that the facts in this case do not bring relator within the provisions of section 15 of article 3 of the Constitution, relator is discharged.

DAVIDSON, P. J. I concur in results. For reasons for my conclusion, see Ex parte Wolters, 144 S. W. 531, this day decided.

PRENDERGAST, J. I refer to my opinion in the Wolters Case for my views in this case. I do not concur, but dissent to the disposition made of this case.

On Motion for Rehearing.

HARPER, J. On a former day of this term the relator was ordered discharged; a majority of the court holding that the Legislature was without jurisdiction to adjudge relator guilty of contempt. The state, through the attorneys representing the Legislature, has filed a motion for rehearing herein, as well as in the case of Ex parte Wolters, in which the same judgment was entered. Relator has filed a motion to dismiss the motion for rehearing, which is fully stated in the opinion of Presiding Judge DAVIDSON in the Wolters Case, and we do not deem it necessary to restate it here.

[18-20] A large part of Judge DAVIDSON'S opinion is devoted to discussing whether relator was guilty of a civil or criminal contempt, if the Legislature had jurisdiction to adjudge him guilty of contempt. It may be conceded that, in drawing the distinction between civil and criminal contempts, the great weight of authority draws this distinction: A civil contempt consists in failing to do something which the contemnor is required to do by order of the court for the benefit or advantage of a party to the proceeding; while a criminal contempt is all these acts of disrespect to the court or its process—in fact all cases in which the state alone is interested in the enforcement of the order. In this case the questions propounded were intended to aid the Legislature in securing information to enact, annul, or repeal laws, and it may be said that the state was the party at interest, and it comes with-

in the class of adjudged criminal contempts.

[21] But it does not necessarily follow that a criminal contempt is a criminal case, within the meaning of our Constitution and laws relating to criminal cases and offenses. No article of the Penal Code makes either civil or criminal contempt an offense, and article 3 of the Penal Code provides: "In order that the system of penal law in force in this state may be complete within itself, it is declared that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this land." So, if a person guilty of criminal contempt *is guilty of a criminal offense* within the meaning of our Constitution and laws, it not having been made an offense by the Penal Code of this state, no person can be punished for being guilty of what is designated as criminal contempt. Again, our Code provides that no person shall be prosecuted for a criminal offense, except upon indictment found in case of felony, or upon presentation of information in case of misdemeanor, and by complaint in justice court. A person who is guilty of *criminal contempt in the presence of the court* may be punished without the presentation of either complaint, information, or indictment. Contempt, in this state, is *not a crime*, because it has not so been made by the penal law. In the case of United States v. Lee Huen (D. C.) 118 Fed. 442, it is said: "A criminal proceeding is the manner in which the government punishes a man guilty of crime." And in the case of Post v. United States, 161 U. S. 583, 16 Sup. Ct. 611, 40 L. Ed. 816, it is held criminal proceedings cannot be said to be brought until a formal charge is made against the accused, either by indictment, or information, or by complaint before a magistrate. In the case of Shultz's Lessee v. Moore (Ohio) Wright, 280, it is said: "A criminal case is a public prosecution for a crime or misdemeanor." In Mitchell v. State, 12 Neb. 538, 11 N. W. 848, it is held: "A criminal case is one where the proceeding against the defendant is by indictment," etc. This question has heretofore been before our own courts, and in the case of Taylor v. Goodrich, 25 Tex. Civ. App. 109, 40 S. W. 515, it is held: "A 'criminal case' is defined to be an action, suit, or cause instituted to secure a conviction and punishment for crime, or to punish an infraction of the criminal law." In that case it is held that a contempt proceeding is not a criminal case within the meaning of our Constitution and laws. For a full discussion of this question we refer to this case, where will be found cited many authorities. Many other cases could be cited; but the opinions in these cases have already become so lengthy we feel that we should be brief, referring, however, to the Canfield Case copied in the original opinion.

[22] But we take it that, if it was a criminal case, this court would not be debarred from entertaining a motion for rehearing. This is not a trial court, but a court of review. It is an appellate court, and we do not adjudge a person guilty or innocent of crime. No judgment we could enter would debar the state from prosecuting a man on a charge of violating the laws of this state. A person arrested for violating the criminal laws of the state may sue out a writ of habeas corpus, alleging that the process is invalid because of some defect, or that the facts do not authorize his detention, and this court may so decree, and discharge him, yet, if additional facts are discovered, the decree of this court would not prevent an indictment and prosecution for the offense. The matters, as heard by us, are not a *trial of the case*, but a review of some character of proceedings. While our laws provide that, where a man has been tried and acquitted, the state has no right of appeal, yet no law provides that, where a person is tried and convicted, the state cannot file motions to correct judgments, bring up correct transcripts, or any other motion that may be filed by the defendant applicable to the case. In the case of Carusales v. State, 47 Tex. Cir. R. 1, 82 S. W. 1038, this court held that the rules governing the Court of Civil Appeals, adopted by the Supreme Court, were applicable to this court under the rules adopted by the Supreme Court, and the Constitution of this state gives to the Supreme Court the right to adopt rules governing all courts. These rules authorize either party to file a motion for rehearing within 15 days from the rendition of the judgment, and there is no law or rule of the court which prohibits the state from filing a motion for rehearing in this court within the time prescribed by law. It has been the rule in this court to permit the state to file motions for rehearing since its organization, and prior to that in the Supreme Court, when it had jurisdiction in criminal cases, and we see no sound reason for changing this rule at this late day. It is the rule of law that is said to be fundamental that a court has jurisdiction over its judgments until the end of the term to alter, amend, or set them aside, unless the judgment has in part been performed. There is not, nor can there be, any such plea entered in this case. We are therefore of the opinion that the motion for rehearing should be entertained, and the motion to strike it from the record overruled.

As hereinbefore stated, the opinions in these cases are of such length we would deem it inexcusable to write at length on any matter involved herein, unless our opinion in the cases had been changed by the motion herein filed by able counsel. While not again writing on the propositions involved, we have carefully considered all the grounds stated in the motion for rehearing, and reviewed the authorities cited; but, be-

ing of the opinion as announced in the original hearing, we are of opinion the motion for rehearing should be overruled.

The motion for rehearing is overruled.

DAVIDSON, P. J. For some of my reasons for believing the state's motion for rehearing should not be entertained, see Ex parte Wolters, this day disposed of.

I am clearly of opinion that there is no merit in the motion for rehearing, and inasmuch as my Brethren entertain jurisdiction to hear and determine the motion, I agree with Judge HARPER in overruling it.

PRENDERGAST, J. [22] I fully concur in Judge HARPER'S opinion that this court has the right and power, and that it is its duty, to entertain a motion by the state for rehearing in a habeas corpus proceeding, notwithstanding on the original hearing this court discharged relator. That such a proceeding is not a criminal *case* under our law, and that the statutes and Constitution prohibiting a new trial in a *criminal case* have no application, I have no doubt.

However, I believe a rehearing should be granted, the former judgment set aside, and relator remanded to custody, in accordance with my opinion in the Wolters Case.

BOST v. STATE.

(Court of Criminal Appeals of Texas. Jan. 10, 1912. Rehearing Denied Feb. 28, 1912.)

1. CRIMINAL LAW (§ 1090*)—APPEAL—BILL OF EXCEPTIONS—NECESSITY.

Objections to the introduction of testimony cannot be considered on appeal in the absence of a bill of exceptions.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 2816; Dec. Dig. § 1090.*]

2. CRIMINAL LAW (§ 598*)—CONTINUANCE—DILIGENCE.

An application for continuance because of an absent witness, accompanied by exhibits showing the issuance of various subpœnas for the witness, was properly refused for lack of diligence, where the exhibits showed that no subpœna was issued to the county wherein it was said the witness resided, or to a county where accused had been informed he was temporarily staying.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1335–1341; Dec. Dig. § 598.*]

3. CRIMINAL LAW (§ 594*)—CONTINUANCE—ABSENT WITNESS—DISCRETION OF TRIAL COURT.

A request for continuance because of an absent witness is addressed to the sound discretion of the trial court, and is properly refused where it is improbable that the witness would testify as claimed.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1321–1332; Dec. Dig. § 594.*]

4. CRIMINAL LAW (§ 721½*)—ARGUMENTS OF COUNSEL—FAILURE OF ACCUSED TO PRODUCE EVIDENCE.

In a prosecution for seduction, where it appeared that prosecutrix had written accused three letters, one of which he introduced in evidence, counsel for the state were justified in commenting upon accused's failure to introduce the other letters, and insisting that they were unfavorable to him, for, where a defendant is on trial for a crime, the absence of any testimony willfully withheld by him forms a predicate for any legitimate deduction.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1673; Dec. Dig. § 721½.*]

5. CRIMINAL LAW (§ 721½*)—TRIAL—ARGUMENTS OF COUNSEL.

In a prosecution for seduction, where it appeared that prosecutrix had written accused three letters, only one of which accused introduced in evidence, and testimony relating to the letters was elicited on cross-examination of the prosecutrix, who hesitated to identify the letter introduced claiming it was part of two different letters, the state's attorney might comment on the failure of accused to introduce the other letters.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1673; Dec. Dig. § 721½.*]

6. SEDUCTION (§ 50*)—PROSECUTION—INSTRUCTION.

In a prosecution for seduction, *held*, that the charge of the court sufficiently submitted everything that was properly necessary to be submitted under the evidence and the law.

[Ed. Note.—For other cases, see Seduction, Cent. Dig. §§ 89–92; Dec. Dig. § 50.*]

7. SEDUCTION (§ 50*)—PROSECUTION—INSTRUCTIONS.

In a prosecution for seduction, a charge authorizing a conviction if accused had, at any time within three years next prior to the finding of the indictment, seduced prosecutrix, was correct, though not referring to the date of the seduction as alleged by prosecutrix.

[Ed. Note.—For other cases, see Seduction, Dec. Dig. § 50.*]

8. SEDUCTION (§ 29*)—PROSECUTION—INSTRUCTIONS—"SEDUCE."

An instruction defining the term "seduce" as an inducement of a woman on the part of a man to surrender her chastity by reason of some art, influence, or deception calculated to accomplish that object, and to include the yielding of her person to him as much as if it was expressly stated, is correct.

[Ed. Note.—For other cases, see Seduction, Cent. Dig. § 53; Dec. Dig. § 29.*

For other definitions, see Words and Phrases, vol. 7, pp. 6389–6393.]

9. SEDUCTION (§ 46*)—PROSECUTION—EVIDENCE—CORROBORATION.

While the prosecutrix is an accomplice to the seduction and must be corroborated before her evidence will justify conviction, she may be corroborated by merely circumstantial evidence.

[Ed. Note.—For other cases, see Seduction, Cent. Dig. §§ 83–86; Dec. Dig. § 46.*]

10. SEDUCTION (§ 46*)—PROSECUTION—EVIDENCE—CORROBORATION.

In a prosecution for seduction, evidence *held* to sufficiently corroborate the prosecutrix to warrant a conviction.

[Ed. Note.—For other cases, see Seduction, Cent. Dig. §§ 83–86; Dec. Dig. § 46.*]

Appeal from District Court, Clay County; P. M. Stine, Special Judge.

Bert Bost was convicted of seduction, and appeals. Affirmed.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes