

IN THE SENATE OF THE UNITED STATES.

MAY 24, 1858.—Ordered to be printed.

Mr. PUGH made the following

REPORT.

The Committee on the Judiciary, to whom were referred the credentials of Graham N. Fitch and Jesse D. Bright, senators from the State of Indiana, together with the documents and testimony relative to that subject, have had the same under consideration, and report, by resolution, as follows:

Resolved, That Graham N. Fitch and Jesse D. Bright, senators returned and admitted from the State of Indiana, are entitled to the seats which they now hold in the Senate as such senators aforesaid—the former until the 4th of March, 1861, and the latter until the 4th of March, 1863, according to the tenor of their respective credentials.

TESTIMONY.

STATE OF INDIANA, *Marion County.*

Before the undersigned, a notary public of the county and State aforesaid, personally came John H. Eagle, foreman of the Journal Company's News Room, and, being duly sworn, says, upon his oath, that the notice hereto attached was published ten successive days, commencing April 26 and ending May 6, 1858, in the Indianapolis Daily Journal, a public daily newspaper of general circulation, printed and published in Indianapolis, Marion county, Indiana.

J. H. EAGLE.

Sworn to and subscribed before me, this sixth day of May, A. D. 1858.

Witness my hand and notarial seal.

[L. S.]

JAMES N. SWEETSER,
Notary Public.

Notice to take testimony in the case of the contested election of Jesse D. Bright and Graham N. Fitch, senators returned and admit-

ted to their seats from the State of Indiana to the Senate of the United States.

To Jesse D. Bright, Graham N. Fitch, and all others whom it may concern :

You are hereby notified that, on the 6th day of May, 1858, between the hours of 9 o'clock a. m. and 6 o'clock p. m., the undersigned will proceed to take testimony in the case of the contested election of Jesse D. Bright and Graham N. Fitch, senators returned and admitted to their seats from the State of Indiana to the Senate of the United States, at the senate chamber, in the State-house, in the city of Indianapolis, in said State, before some judge authorized by the resolution of the Senate of the United States adopted upon the 16th day of February, A. D. 1858, and that they will continue taking said testimony from day to day, between said hours, until all is taken.

JOHN R. CRAVENS,
CHARLES D. MURRAY, } Protestants.
JOHN S. BOBBS,

IN SENATE OF THE UNITED STATES, February 16, 1858.

Resolved, That, in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members, touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis: *Provided*, That the proofs to be taken shall be returned to the Senate of the United States within ninety days from the passage of this resolution: *And provided*, That no testimony shall be taken under this resolution in relation to the qualification, election, or return of any member of the Indiana legislature.

Attest :

ASBURY DICKINS,
Secretary.

Depositions taken by the Hon. Stephen Major, sole judge of the fifth judicial circuit of the State of Indiana, of witnesses in the case of the contested election of the Hon. Jesse D. Bright and the Hon. Graham N. Fitch, senators returned and admitted to their seats from the State of Indiana in the Senate of the United States, now pending in the Senate of the United States, pursuant to the annexed resolution of said Senate adopted on the 16th day of February, A. D. 1858, and

in accordance with the annexed notice, to be used upon the hearing of said case on behalf of the protestants, taken at the senate chamber, in the city of Indianapolis, and State of Indiana.

Ashbel P. Willard, being duly sworn, deposeth to the following interrogatories, as follows :

First question by contestors. State your name and residence, and whether you were present at the organization of the senate of the State of Indiana on the 8th day of January, 1857.

Answer, by Ashbel P. Willard. My name is Ashbel P. Willard ; I am a resident of the State of Indiana, and was present at the organization of the senate of the State of Indiana on the 8th day of January, 1857.

Question 2. State what senators held over, and what persons were sworn into office on that day as senators, and by whom.

Answer. The senators who held over were : Samuel L. Rugg, W. C. Tarkington, Le Roy Woods, Richard D. Slater, A. R. McCleary, John Mathes, A. J. Hostetler, William Mansfield, W. B. Richardson, C. K. Drew, George W. Brown, James F. Suit, David Crane, G. W. Chapman, John R. Cravens, J. T. Freeland, David R. Bearss, Algernon S. Griggs, John Weston, P. S. Sage, S. T. Ensey, D. H. Crouse, Lewis Burke, James F. Parker, and J. J. Alexander, who was not present on that day—in all, twenty-five. The senators who were sworn in on that day were : James E. Wilson, Archibald Johnston, David Saunders Gooding, Lewis Wallace, David McClure, Robert W. Fisk, Hugh Miller, John Slater, Horace Heffren, William E. McLean, John Hargrove—all these were sworn in by me as presiding officer of the senate. Charles D. Murray, Walter March, Alanson W. Kendry, John F. Stevens, Isaac Kinly, John Green, Morgan H. Weir, Solomon Blair, Daniel Hill, John Yaryon, John S. Bobbs, Isaac A. Rice, Stanley Cooper, and John Thompson, were sworn in by Samuel B. Gookins, a judge of the supreme court, under the direction of Lewis Burke, in the forenoon of that day. In the afternoon of the same day all the last named senators who had sworn under the order of Senator Burke, with the exception of Mr. Stanley Cooper, were, under my order, sworn in by Judge Gookins as senators. Afterwards, under the order of the senate, I administered the oath to Stanley Cooper ; making in all, including the senators holding over, fifty.

Question 3. State your opportunities of knowing the facts of the organization of the senate just named.

Answer. I was at the time lieutenant governor of the State, and, as such, presiding officer of the senate, and was present all the time on that day when any business was done.

Question 4. State who acted as senators during the session of the year 1857.

Answer. All the men above named acted as senators during that session, as far as I am informed, at least I never heard of the death of any of them ; no resignation of any of them was filed with me, and no expulsion of any of them were certified to me.

[On cross-examination, the above witness answered the following

interrogatories as follows, propounded by Messrs. Wilson, Voorhees, and Henderson, as friends of Messrs. Bright and Fitch, to which the protestants object.]

Question 1. Were you present at the attempted organization of the Indiana senate, on the first day of the session of 1857? If so, what do you know about Lieut. Governor Willard taking the chair at the usual hour of meeting and calling the senate to order, and directing a call of the senators claiming seats; and of James H. Lane, of Kansas, placing a chair in the president's stand, at the right of Gov. Willard, and Lewis Burke, senator from Wayne county, taking that chair, on the call, and upon the nomination of the republican senators; and of the republican senators nominating a secretary; and of said Burke, as such pretended presiding officer, directing the secretary, thus nominated by the republican senators, to call the roll of senators; and give all the particulars attending it?

Answer, by Gov. Willard. I was present at the organization of the senate on the first day of the session of 1857. I took the chair, as presiding officer of the senate, at the usual hour of the meeting of said body, and called the senate to order. While I was calling the senate to order, D. Bearss (a senator holding over) called Lewis Burke (a senator holding over) to take the chair, and preside. Said Burke took a chair upon my right; who placed it there, I do not know. I directed the secretary of the senate to call the roll of the senators holding over; all those who were classed as democrats answered to their names; those who were classed as republicans or know-nothings did not. I then directed the call for those senators who claimed to be elected who had not been sworn into office; all those classed as democrats came forward, and were sworn by me; the republicans did not. The senators who had called Mr. Burke to preside over them, elected, on motion, a secretary, J. R. Cravens, (a senator holding over.) He called the names of the republican and know-nothing senators who held over, and they responded to their names; the republican senators claiming seats who had not been sworn in were then called, and, by Judge Gookins, under the order of said Burke, took the oath. From the time the senate opened until the final motion for adjournment, the republican senators refused to recognize me as the presiding officer. Every motion made by them was to Burke; a scene of confusion existed for about three or four hours, until finally a motion to adjourn prevailed. On the senate's reassembling, Burke abandoned his position, and the senate came to order; as to who was present, I cannot say; there was a large crowd in the hall, many inside the bar; all efforts to maintain order among them were ineffectual; James H. Lane, of Kansas, was among those inside the bar; so was O. P. Morton, and many of the prominent republicans of the State; after the republican senators were sworn in, under the order of Burke, they elected J. Harney as their secretary; in the afternoon, when Burke had abandoned his place, the said Harney, after the senators had been all sworn in, either by me or my order, was elected secretary of the senate; Stanley Cooper was sworn by me, in obedience to the resolution of the senate.

Question 2. Do you not know that whenever you would direct a

call of the senate for any purpose, that Burke would immediately direct the secretary acting under him to call the senate, and that the two secretaries were engaged at the same time in the calls: the republican senators answering the one, and the democrats the other?

Answer. During the call of the roll under my direction, the democrats would answer to their names. But while this was transpiring, under the direction of Burke Mr. Harney would call the roll, and the republicans would respond to him. This was the result upon every roll call. I believe, upon the motion to adjourn, there was no call of roll.

Question 3. Do you not know it to be a fact, which was notorious in Indiana, that the elections of J. S. Bobbs, of Marion county; Cooper, of Rush county, and Rice, of Fountain county—all three being republican senators—were contested on account of fraud used in procuring their elections; and that the organization of the senate above spoken of by you, by the republicans, was made for the purpose of avoiding such contests?

Answer. It was understood, before the meeting of the legislature, that the seats of Bobbs, Cooper and Rice were contested. The motive which influenced the republicans in making the organization under Burke, I do not know. It was understood that Rice and Bobbs had certificates of election and that Cooper had none. It was claimed that the seats of these three republican senators were to be contested, because votes had been imported into their districts, which were illegal, for the purpose of electing them to the senate.

Question 4. Does the senate journal show the calling of Lewis Burke to the chair on the first day of the session, at the time he attempted to usurp your place as presiding officer; and if it does not, state the reason why?

Answer. The journal of the senate does not show the calling of Burke to the chair. The journal of the senate is made by the secretary, under the direction of a majority of the senate. Why these proceedings are suppressed, I cannot know.

Question 5. What county did Senator Rice represent? Was he elected at the October election, 1856, and was he elected at the same time mentioned in the opinion of the Hon. William P. Bryant, which opinion is herewith filed, and marked Exhibit A? [This exhibit withdrawn by the questioner, being irrelevant.]

Answer. Senator Rice was the senator from the district composed of the county of Fountain, and was elected at the October election, 1856, at the same time mentioned in Exhibit A.

Question 6. State what you know in reference to the senate being crowded inside and outside of the bar, when you were attempting to organize, by excited and armed republicans, to aid Lewis Burke in his usurpation. And state whether you were, as lieutenant governor, threatened with personal violence in case you did not submit to said usurpation; by whom such threats were made, and the specific occasion of them.

Answer. The senate chamber was crowded during the attempt to organize the same. According to the usual custom, I, as lieutenant governor, endeavored to have the new senators come forward and be

sworn according to the constitution. They refused. During all the forenoon a scene of confusion ensued; and when I called the attention of senators to the fact that their course was revolutionary, and that if they desired a revolution, that they had better commence it now, the senator from Miami and Wabash made threats of personal violence. As to who was armed, I know nothing, except from the statements made to me by others.

Re-examined by protestants.

Question. Do you know of any instance in the history of the State of Indiana when, by the constitution, the two houses of the general assembly of the State assembled to count the vote for governor and lieutenant governor, and declare the result, that said joint convention was adjourned over for the purpose of transacting any other business? If so, state when.

Answer. I never saw the votes counted for governor and lieutenant governor until 1857, and have no knowledge of the adjournment of any joint convention assembled for that purpose.

Question. Do you know of any usage or custom in Indiana for joint conventions assembled to count the votes for governor and lieutenant governor to adjourn over for the transaction of any other business?

Answer. I do not.

The taking of these depositions postponed until Friday, the seventh instant, at 2 o'clock p. m., at which time his excellency A. P. Willard appeared as a witness, at the senate chamber, and his examination continued as follows:

Cross-examined by Voorhees and Henderson, as friends of Bright and Fitch.

Question. What do you know, either from personal knowledge or from information derived from leading republicans, of a determination on the part of the republican members of the legislature to prevent an election of senators that session, even if they had to break up the legislative body to prevent it?

Answer. The republicans had held a convention at Indianapolis before the meeting of the legislature, and a majority of the republican editors of the State had held a convention at the capital; at both these conventions I am informed that resolutions were passed requesting the republicans in the legislature to prevent an election of United States senators. These conventions were immediately preceding the assembling of the legislature, and many of those who crowded the lobbies and the senate chamber on the opening of the legislature were those who had attended these conventions.

Question, by same. What rules and customs have governed joint conventions of this State?

Answer. I have attended several joint conventions; the lieutenant governor in the person, acting as president of the senate, becomes the president of the joint convention; he calls the same to order; no motion to adjourn is ever entertained by him; he adjourns it himself, without motion, either *sine die* or to a given day; I have not been able to find in the record of the proceedings of joint conventions in this State any instance varying with the custom as aforesaid.

Question. State whether the senate met the house in joint convention to count the votes for governor and lieutenant governor at the hour indicated by the speaker of the house in his message to the senate on that subject, and how many senators were present in said joint convention.

Answer. The speaker of the house sent, through me, to the senate an invitation to the senate to appear in the hall of the house of representatives, and I read said invitation to the senate; then adjourned the senate to meet in the hall of the house at the hour specified by the speaker, and a majority of the senate attended in the hall of the house to witness the counting of said votes; all the democrats, 23, were present, and Weir, Sage and Freeland, and all within the bar of the house of representatives.

Question. State if, when said joint convention so as above assembled, constituting as it did a majority of both houses of the legislature, adjourned, it was not perfectly notorious to democrats and republicans alike that said joint convention was so adjourned to a day certain for the purpose of electing senators in Congress?

Answer. I do not know of any man who was a member of the legislature but did not expect that an election of United States senators would be made at either the adjourned convention, or some that was to follow afterwards. The republicans refused to consent to the creation of the first joint convention to have the votes counted, because they alleged that the democrats would proceed to elect United States senators.

Re-examined by protestants.

Question. In the number of joint conventions at which you attended, please state whether they were not in every instance assembled by concurrent vote of the two houses, for a specific purpose?

Answer. All the conventions at which I presided were assembled under resolution, except the convention called to count the votes above alluded to, and for a specific purpose; they transacted no other business than that specified in the resolution, and were all by me adjourned sine die. As to how those were created over which I did not preside, I cannot say.

ASHBEL P. WILLARD.

William Sheets, of the city of Indianapolis, of lawful age, being first duly sworn, deposes and says, in answer to interrogatories:

Question, by protestants. State your name and residence, and how long you have resided in the State of Indiana.

Answer. My name is William Sheets, and have resided in Indiana forty years.

Question. State whether you have been acquainted with the custom and usage of electing senators of the United States by the legislature of Indiana; if so, what has been the custom as to the agreement of the two houses to go into the election, and in what manner have they agreed?

Answer. I have been acquainted with the custom and usage of electing United States senators by the legislature of Indiana for thirty senate, respectively, to adopt separate resolutions fixing upon a day to years. The custom has been for the house of representatives and go into such election; on the day agreed on, and at the hour named in the resolution, the house of representatives send a message to the senate acquainting them that the house is in readiness to go into the election of United States senator, and inviting them to the hall of the house of representatives for that purpose. On the arrival of the senate in the hall of the house, the president of the senate presides in the joint convention; and when an election is made, he pronounces the joint convention dissolved.

Question, by protestants. State your means of knowing the custom of the legislature foresaid.

Answer. My means of knowing the custom grew out of being clerk of the house of representatives for three years, and secretary of state for eight years, and being conversant with the proceedings of the general assembly for thirty years, having for twenty-five years of that time resided at the seat of government.

On two occasions, at the regular periods for the election of United States senators, the election was postponed to the next session. The first case was thus postponed by the casting vote of Jesse D Bright, as president of the senate, on a resolution of the senate to go into said election. The second case, the senate refused to pass the resolution introduced to go into such election.

Question, by same. State whether you have known of an election of senators of the United States in the State of Indiana without the concurrence of both houses in advance by resolution?

Answer, by Mr. Sheets. Not until the so-called election of Jesse D. Bright and Graham N. Fitch, at the last session of the general assembly of Indiana.

Question, by same. State the political complexion of the two legislatures above alluded to by you.

Answer, by Mr. Sheets. On the first occasion of postponement alluded to, there was a whig majority in the house, and the senate a tie; the whigs would have had a majority on joint ballot on the second occasion of postponement, which was in 1855; the democrats had a majority in the senate, and in the house the people's party, or the party in opposition to the democratic party, had a majority, and that party would have had a majority on joint ballot.

Cross-examined by Voorhees and Henderson.

Question. Were you ever a member of either branch of the legislature?

Answer. I have not been.

Question, by same. Were you in attendance upon the sitting of the legislature in the winter of 1857? and if so, were you in caucus with the republican members thereof in reference to resisting and preventing an election of senators in Congress at that session?

Answer. I was occasionally in attendance at the legislature, but was present at no caucus of any kind.

Question. Was it not fully understood, so far as your knowledge extends, by the republican members of said legislature, and especially of the senate, that they were to resist and prevent an election of senators at that session?

Answer. I have no knowledge of what was the understanding on that subject.

Question. You speak of an election of senators being prevented by the casting vote of Jesse D. Bright in the session of 1844 and 1845. State what party had prevailed in the State at the election next preceding said session for President, and on the popular vote generally?

Answer. Mr. Polk carried the State that year for President.

Re-examined by protestants.

Question. Have you ever known a joint convention assembled to count the vote for governor and lieutenant governor of the State adjourned over for the transaction of any other business?

Answer. I never have.

WM. SHEETS.

The further taking of depositions postponed until Saturday morning, 8th of May, 1858, at 8 o'clock, at which time Charles D. Murray and Cravens, the contestors, and Voorhees, as the friend of Messrs. Bright and Fitch, appeared at the senate chamber, when Oliver H. Smith presented the following, as his answers to the questions therein propounded to him.

Oliver H. Smith, being duly affirmed, in answer to the following questions, says:

Question 1. State your name and residence, and how long you have resided in the State of Indiana?

Answer. My name is Oliver H. Smith; my residence is the city of Indianapolis; I have resided in the State of Indiana since the year 1817.

Question 2. State whether you have been acquainted with the custom and usage of electing senators of the United States by the legislature of Indiana; if so, what has been the custom as to the agreement of the two houses to go into the election, and in what manner have they agreed, and how old is the custom?

Answer. I have been acquainted with the custom of electing United States senators in Indiana since the first election of William Hendricks, in 1825; the custom has been, at all the elections of senators since that election, inclusive, up to 1857, to elect by joint vote of the senate and house of representatives, met in joint convention in pursuance of a joint resolution, or a resolution of one body, sitting as such, with a concurrence of the other body, sitting as such. Such, I understand, has been the custom from the organization of the State government and the first senatorial election, up to the year 1857, without an exception. The act of 1831 expressly provides "that,

when the term of any senator in Congress is about to expire, it shall be the duty of the general assembly, at their session last preceding the term of service of such senator, to elect by joint ballot of both houses, on such day and at such place as they may agree upon, a suitable person to serve as a senator from this State to the Congress of the United States for the next succeeding six years." This act embodies the custom and usage on the subject, both before its passage and since it has been left out of our recent revisions.

Question 3. State your means of knowing the custom of the legislature aforesaid.

Answer. I was a member of the legislature of the State in the year 1822-'23; have been something of a politician in my day; was present at every senatorial election from 1825 till 1837, and every senatorial election from that time to 1857, except the election of Mr. Hannegan over myself and General Howard in 1842, when I was at Washington city. I have been a candidate for United States senator three times; once elected and twice defeated—once by General Tipton and once by Mr. Hannegan; during all which time I never knew or heard of any other custom or usage of electing a United States senator but by a joint vote of the two bodies, the senate and house of representatives, met in joint convention, in pursuance of a concurring resolution, passed separately, fixing the time and place. I am satisfied that this has been the usage, custom, and understanding of all parties, and has been conformed to, without objection or deviation, up to 1857. I state this the more confidently from the fact that on one or more occasions, when one of the political parties has had a majority in one house and the opposite party would have a majority on joint ballot, the house having the majority would refuse to pass the resolution of the other house to go into the election, and thereby postpone the election to the next legislature; as was the case when Lieutenant Governor Jesse D. Bright repeatedly gave the casting vote, laying a resolution to go into the election on the table, when the opposite party had the majority on joint ballot.

Question 4. State whether you have known of an election of senators of the United States in Indiana without the concurrence of both houses of the legislature in advance, by resolution, to go into the election?

Answer. I have never known or heard of such an election, or an attempt to elect, in such a manner, except in the case of Messrs. Bright and Fitch, in 1857.

Question 5. You have stated that Jesse D. Bright, when acting as president of the Indiana senate, gave the casting vote against a resolution to go into the election of United States senator. Please state how the legislature were divided at that time, and the consequences of his refusal to go into the election, and whether he said anything to you on that subject?

Answer. At the time I referred to, the senate of the State was, politically, equally divided. The house of representatives was largely anti-democratic, giving a large majority on joint ballot against the democratic party. The house passed resolutions fixing the time of the election, by joint ballot, of a United States senator. The senate was a

tie, and Mr. Bright, the lieutenant governor and president of the senate, repeatedly voted to lay the resolutions on the table, declaring, as I understood him, without any concealment, that there should be no United States senator elected at that session; the result was, that the election was postponed until the next session of the legislature, when it took place by joint vote of the two houses, met in convention, jointly, in pursuance of a concurring resolution of both houses, and Mr. Bright was elected United States senator at that election.

Question 6. Have you ever known a joint convention of the legislature, assembled to count the vote of the governor and lieutenant governor of this State, adjourned over for the transaction of any other business?

Answer. Never, until the session of 1857.

O. H. SMITH.

Charles D. Murray, being called by D. W. Voorhees, who appears as the friend of Messrs. Bright and Fitch, and duly sworn, on his oath deposes as follows:

Question, by Voorhees. Were you a member of the Indiana senate in the year 1857; and, if so, from what counties, and what were your politics at that, and also at the present time?

Answer. I was a member of the senate of Indiana at the time indicated, and represented the counties of Cass, Howard, and Pulaski; was a republican then, am now, and purpose to remain so.

Question, by same. State whether it was not definitely agreed and determined upon, by and between the republican members of the Indiana senate, and the republicans generally, then at Indianapolis, that no election of senators in Congress should take place at the session of 1857; and whether, or not, such determination was not made in caucus or convention of republican members?

Answer. In answer to the above interrogatory, I say that no such agreement or understanding was definitely agreed on at any caucus or convention at which I attended, and I think I attended and took a prominent part in all of them.

Question, by same. Was it not so understood, without any reference to caucus or convention, among members, and was it not especially so understood by yourself?

Answer. There was no such understanding among the republican members that I know. There were some of the members who expressed themselves as against suffering the democrats to elect senators, as they had served us at the previous session, when the democrats refused to elect when we had the majority. I had no definite understanding myself as to whether there would be an election.

Question, by same. Did not the republicans, as a body, in the senate, do all in their power to prevent an election of United States senators?

Answer. We did all in our power to prevent an illegal and unconstitutional election of senators. There was no proposition made, that I now remember, by resolution in the senate to go into the election in the manner sanctioned by the past usage and custom of the State, unless towards the close of the session, by Mr. McLain, of Vigo.

Question, by same. Did not the house, by resolution, invite the

senate to go into an election of United States senators, and did not you and your republican colleagues vote against concurring?

Answer. I have no recollection of any message from the house covering any resolution fixing a time for electing United States senators.

Question, by same. Why did you and your republican colleagues vote to place Lewis Burke, a member of your own body, in the chair of the presiding officer, thereby seeking and succeeding, for the time being, to supplant Gov. Willard?

Answer. In answer to the above interrogatory, I say that my action, and I think that of my republican colleagues, was based upon the fact that we held that the lieutenant governor is not the president of the senate until the senate is organized—that is, with a constitutional quorum sworn in; that until such organization he has no power as president. Another reason for our action was, that it was understood and believed that it had been agreed in democratic caucus that Willard would exclude the republican members whose seats had been contested, organize the senate without them, and thus, with a majority, elect the officers of the senate, and perhaps United States senators. Two of our republican senators, Messrs. Bobbs and Rice, had regular certificates of election, and the other, Dr. Cooper, had no regular certificate of election, but a certified copy of the return of the board of commissioners, showing him elected by one hundred majority; but the clerk had refused to give him a certificate of election, because his seat was contested, and we believed that these contests had been entered for the purpose of thus excluding them to give them that unfair advantage.

In addition to what I have said in the foregoing part of this answer as to the organization of the senate, I state that, up to the last four years, the two houses had been organized by law by the secretary and auditor of state, but in the revision of 1852 the law was omitted, and there was no law upon the subject.

Question, by same. Were not you and the republicans generally determined and prepared, by force and violence if necessary, to carry out the organization under Lewis Burke; and was not James H. Lane, of Kansas, present in the lobby, and also inside of the bar of the senate, advising and urging the course pursued by the republican members?

Answer. As to any force or violence to be used, we had no agreement or understanding about it. Our understanding was, that we would call a senator holding over to the chair, and organize by swearing in all the newly elected senators, both democrats and republicans, and then let Willard preside, as he had a right to do.

I do not know of any member or other person who had prepared himself with arms for the purpose of using them. We attained our object, a full organization of the senate. General Lane was, I believe, in the senate chamber, in the space, to the right of the president, for visitors. I do not know that he was armed; the only conversation I had with him was, that he mentioned to me once, during our discussion, of the power of the president to organize the senate, and, on my coming to him, he stated to me that I was right in my position; that when he took the chair as lieutenant governor, in 1849, he did

not do so until the Senate was organized by a State officer. I know of no caucus in which he was present or participated.

Question, by same. Did not the republican senators, on the 2d day of February, 1857, in the absence of every democratic senator, twenty-three in number, take up and adopt the following resolution, found on page 222 of the Senate Journal, to wit: "*Resolved, That Le Roy Woods, by accepting the office of moral instructor for the State prison, discharging its duties and receiving the emoluments thereof, since his election as such senator from the county of Clark, has vacated his office as senator, and he is not entitled to his seat in the Senate.*" And did not said republican senators from that time up to the final adjournment of the Senate, refuse to recognize said Woods as a senator, or suffer him to take any part whatsoever as a senator?

Answer. On Monday, the 2d day of February, 1857, at two o'clock p. m., the senate took up the resolution above indicated, and passed it, as shown by the records of the senate. I do not know, and do not think that any democratic senator was present. We did refuse to recognize Mr. Woods as senator for the remainder of the session.

Question, by same. Was there a quorum present when said resolution was passed?

Answer. There was no call of the senate, and the ayes and noes were not called. I think there was not a quorum of thirty-four members present.

Question, by same. What is the constitutional number of votes required in the senate to expel a senator?

Answer. Two-thirds of the senators elected, I believe, which would be at least thirty-four members. That is the requisition of the constitution for the expulsion of members.

The further taking of depositions postponed until Monday next, at 2 o'clock p. m., at the senate chamber.

Monday, the 10th day of May, 1858, met, by consent of the contestors, Messrs. Murray and Bobbs, and of William Henderson, as friend of Messrs. Bright and Fitch, at the supreme court-room, in the capitol building, in Indianapolis. The said witness, Charles D. Murray, appeared, and his examination continued.

I, John D. Defrees, as attorney of contestors, propounded to said Murray the following questions:

Question. State, if you please, the number of senators sworn in on the 8th day of January, 1857, on the organization of the Indiana senate; by whom they were sworn, and the number of senators holding over from the former session?

Answer. There were twenty-five senators sworn on the first day of the session. The republican senators were in the forenoon of that day sworn in by Judge Gookins, and the democrats by Lieutenant Governor Willard. In the afternoon of that day, by agreement, all the newly elected senators, both democrats and republicans, except Dr. Cooper, of Rush, were sworn in by Judge Gookins, by order of Governor Willard. These, with the senators holding over, made forty-

nine senators sworn in. After this the president declared that the senate had a constitutional quorum, and that the senate was organized. I then offered a resolution that Stanley Cooper, senator elect from the county of Rush, be then sworn in. This was adopted, I think, by a vote of 28 to 20, and the oath of office was administered by Lieutenant Governor Willard, as president of the senate, making twenty-five new senators, and, with the senators holding over, twenty-five in number, fifty senators sworn. All these were present, except Captain Alexander, of Owen, who did not arrive on the first day. He arrived, I think, on the second or third day of the session.

Question. What was the number of senators who remained in their chamber on the 12th of January, 1857, at the time of the counting of the votes for governor and lieutenant governor in the hall of the house of representatives; and did any of the republican or American members attend as part of said joint convention?

Answer. When Governor Willard, with the democratic senators, left the hall, as he declared, to be invested with the office of governor, the republican and American members remained in their chamber; the secretary was directed to and did call a roll of the senators, and twenty-seven senators were found present, and no republican or American senator was present in the pretended joint convention to participate in its action. If, as Governor Willard states in his deposition, Messrs. Sage, Weir, and Freeland, were within the bar of the house at any time, they were certainly there merely as spectators; I know they were as loud and earnest in their denunciations of the course of Willard as any of us.

Question. What is the constitutional number of votes required to declare a member's seat vacant?

Answer. A majority of senators present, if a quorum; the rule is different from expulsion; to expel a member, by the constitution, requires two-thirds of all the senators elected; to declare a seat vacant, requires a majority of a quorum, which, in our senate, is thirty-four.

Original examination resumed by Henderson, as friend of Bright and Fitch.

Question. Did you see Senators Sage, Weir, and Freeland in the senate chamber all the time the votes for governor and lieutenant governor were being counted?

Answer. Of course I did not see them all the time; but what I mean to say is, that, as senators, they did not attend that joint convention to participate in its deliberations.

Question, by same. Please state if, after the election of United States senators, you, Mr. Cravens, and other republican senators, did not complain of and denounce Senator Weir for having attended the convention after two hours, contrary to the agreement and understanding of the republican members.

Answer. On the 29th day of January preceding the pretended election, the senate had adopted a protest and resolutions against any such joint convention; and among ourselves, as Americans and republicans, we had taken strong grounds against any such sham election, and I am very sure we denounced Mr. Weir for his conduct in attending such convention so called.

William Henderson, esq., as the friend of Messrs. Bright and Fitch, proposed to examine, on behalf of said Bright and Fitch, Dr. John S. Bobbs and John D. Defrees, esq., to which the contestor, Charles D. Murray, esq., objected, and his objection was sustained on the ground that said Bright and Fitch had not, nor had any one on their behalf, given any notice of the taking of the same, as required by the resolution of the Senate.

STATE OF INDIANA :

I, Stephen Major, judge of the fifth judicial circuit of said State, certify that the foregoing depositions of his excellency, Ashbel P. Willard, William Sheets, Oliver H. Smith, and Charles D. Murray, esquires, were duly taken before me on the sixth, seventh, eighth, and tenth days of May, instant, at the senate chamber, in the capitol building, in Indianapolis, in pursuance of the accompanying notice and copy of resolution of the Senate of the United States, except the cross-examination of Charles D. Murray, and his re-examination in chief, which were done in the supreme court-room, in said capitol building, by consent of the contestors, and of Henderson, as the friend of said Bright and Fitch, it being more comfortable and convenient for such purpose than the senate chamber; that said Willard, Sheets, and Murray wrote their several answers to the foregoing questions propounded to them, in my presence, and Oliver H. Smith read off his several foregoing answers to the questions propounded to him, in my presence, as his answers thereto, the same being in his own handwriting.

That the foregoing witnesses were by me first duly sworn or affirmed, as required by law, before they severally deposed as aforesaid; and that one or more of the contestors, Charles D. Murray, Dr. John S. Bobbs, and John R. Cravens, were present at the taking of said depositions; and that Daniel W. Voorhees, Samuel C. Wilson, and William Henderson, esquires, as the friends of Messrs. Bright and Fitch, were present part of the time, and one of them all the time, during the taking of said depositions.

In witness whereof, I have hereunto subscribed my hand, this 10th day of May, A. D. 1858.

STEPHEN MAJOR.

AFFIDAVITS.

WASHINGTON COUNTY }
District of Columbia, } ss.

Richard D. Slater, being duly sworn, says, that he was a senator from the county of Dearborn, in the State of Indiana, at the session of the legislature commencing January 8, 1857. He was in his seat on the day mentioned, and saw Lewis Burke, a senator from the county of Wayne, enter the desk of the presiding officer, (Lieutenant Governor Willard being at his post, calling the senate to order, in accordance with the constitution, and according to the rules and usages of that

body,) and usurp the right to make a like call to order, and to attempt a separate organization of the republican members of the senate. That while Governor Willard was calling or directing a call of the roll, the said Burke was alongside of him making or causing a like call to be made. That the newly elected democratic members of the senate came forward and were sworn by Governor Willard, according to the rules and usages of that body, and that Stanley Cooper, John S. Bobbs and Isaac A. Rice, republicans, claiming seats, but whose right to seats was contested, came forward and were sworn, by order of said Burke, by Judge Gookins, a republican member of the superior court, in violation of the rules and usages of the senate. Pending this disorganizing movement, the lobbies of the senate chamber and the avenues leading to the seats of senators were filled by a noisy, disorderly crowd of persons, who seemed to have been selected for that occasion, encouraged and led on by James H. Lane, of Kansas.

This affiant further states that he is and has been a member of the Indiana State senate for the last five years, and at one time was chosen its presiding officer, and has no hesitation in saying that the induction of the three senators above named into office at the time and in the manner done was in violation of law and the rules and usages of that body; and he further states that at the session of the joint convention preceding the election of United States senators, and at the one at which such election occurred, several senators (certainly three or four) were in attendance in the hall of the house of representatives who did not respond to their names, and whose names consequently are not recorded as participating in the proceedings; and he further states that when the first sittings of the joint convention adjourned it was by unanimous consent, and with a full knowledge that at the last adjourned session of the convention, United States senators were to be elected.

This affiant further states that he is now and has been for some time past sojourning in the city of Washington.

R. D. SLATER.

Signed and sworn to before me, this 19th day of April, 1858.

A. K. ARNOLD,
Justice of the Peace.

WASHINGTON COUNTY, }
Dist. of Columbia, } ss.

Cyrus K. Drew, being duly sworn, doth depose and say: That he was a senator from the district composed of the counties of Vanderburg and Posey, in the State of Indiana, at the session of the legislature commencing on the 8th day of January, 1857, and was in his seat on the said day. Lieutenant Governor Willard, the constitutional presiding officer of the senate, called the senate to order, in accordance with the rules and usages of that body; simultaneous with such call upon the part of the said Willard, on motion of _____, a republican senator, Lewis Burke, another republican senator, took a seat by the side of the said lieutenant governor, in a chair placed there

for that purpose by James H. Lane, of Kansas, who appeared to escort Burk to the seat aforesaid. While Lieutenant Governor Willard was calling or directing a call of the roll, said Burk was attempting to usurp his (Willard's) authority, by making, or causing to be made, a like call through John R. Cravens, another republican senator, who was pretending to officiate as clerk, appointed as such in the same illegal manner as Burk; although the regular clerk was at his post in the discharge of his duties. The newly elected democratic members of the senate came forward and were sworn by Lieutenant Governor Willard, according to the rules and usages of that body. The republican members of the senate refused to respond to their names when called by Lieutenant Governor Willard, or under his directions; but Stanley Cooper, John S. Hobbs, and Isaac A. Rice, republicans claiming seats, but whose rights thereto was contested, came forward and were sworn in by order of and under direction of said Burk, in violation of the rules and usages of the senate. Although the republicans of the senate refused to permit investigation into the right of the above named men to seats, this affiant, being a member of the senate committee on elections and having examined their right, believes, and subsequent investigation has proved, they were not legally entitled to seats.

While these disorderly and illegal proceedings were being had within the bar of the senate, the doors and lobbies of the senate chamber and the avenues leading to the seats of senators were filled by a boisterous armed mob, who seemed to have come there for the purpose of overawing the lieutenant governor and the democratic members of the senate, and to be acting under the direction of the aforesaid James H. Lane.

This affiant further states that three or four republican senators, who did not respond to their names, and whose names, consequently, are not recorded as participating in the proceedings, were, nevertheless, present in the hall of the house of representatives at the session of the joint convention at which United States senators were chosen, and at the previous sessions thereof. And this affiant further states that the two first sessions of the joint convention adjourned to a day certain, by unanimous consent, and with a full knowledge upon the part of every senator and representative that, at the last adjourned session, United States senators were to be elected.

This affiant further states that he is now temporarily in Washington city, and is about leaving for Minnesota Territory, without returning to the State of Indiana; and that he intends to make Minnesota his future residence.

CYRUS K. DREW.

Signed and sworn to before me this 16th day of April, 1858.

A. K. ARNOLD,
Justice of the Peace.

WASHINGTON COUNTY, }
 District of Columbia, } ss.

William J. Cullen, being duly sworn, doth depose and say: That he was a representative from the county of Cass, in the State of Indiana, in and during the session of the legislature of the said State, commencing on the 8th day of January, A. D. 1857; that upon the organization of the house he learned that there was difficulty in organizing the senate; that with difficulty he made his way into the senate chamber, which he found a scene of disorder and confusion. A mob was in possession of the lobbies. Lieutenant Governor Willard was in the chair, endeavoring to preside over the senate and preserve order. By his side sat another man whom this affiant afterwards learned was Lewis Burk, republican senator from the county of Wayne, and who was disputing with Lieutenant Governor Willard the right to preside and swear in members of the senate. This affiant was present at the three several sessions of the joint convention, by which United States senators were elected. Its first two sessions were adjourned by the presiding officer, with the unanimous consent and full knowledge upon the part of the members of the said convention; that at the last adjourned session of the convention aforesaid United States officers were to be elected. The election of United States senators at the third and final session of the joint convention was universally understood, as this affiant believes, by the members of both political parties comprising the general assembly, to be the special order and business of the said third session; and that knowledge and understanding existed for some considerable time previous to the sitting of the said third session of the joint convention at which the United States senators were elected.

And this affiant further states that at the three several sessions of the joint convention aforesaid, several republican senators were in attendance, but refused to respond to their names, who did not participate in the proceedings.

And this affiant further states that he is temporarily in this city, (Washington,) and is about to return to the Territory of Minnesota, of which he is a citizen, and has been for some months past.

W. J. CULLEN.

Signed and sworn to before me this 19th day of April, 1858.

A. K. ARNOLD,
Justice of the Peace.

Copy of the law formerly in force.

AN ACT for the formation of congressional districts and for the election of senators and representatives in Congress. Approved January 7, 1831.

SEC. 1. *Be it enacted by the General Assembly of the State of Indiana, That when the term of any senator in Congress is about to expire, it shall be the duty of the general assembly, at their session last preceding the term of service of such senator, to elect, by joint*

ballot of both houses, on such day and at such place as they may agree upon, a suitable person to serve as senator from this State to the Congress of the United States, for the next succeeding six years; but no person shall be considered elected unless he shall receive a number of votes equal to a majority of all the voters present.

SEC. 2. In all such elections the president of the senate shall preside. There shall be two tellers, one to be appointed by the president of the senate, and one by the speaker of the house of representatives, in their houses, respectively, before they meet to conduct such election; notice of which appointments shall be given to each house, respectively, when made, by such messenger as the president of the senate and speaker of the house of representatives may direct; and in voting each member shall be called alphabetically, beginning with the senators; and when voting, it shall be the duty of the secretary of the senate and clerk of the house of representatives to attend and take down the name of each person voting; also, a tally of the votes received by each person voted for as the tellers read the tickets; which tally papers they shall compare after the votes are counted out, and they agree, they shall jointly sign each of them, and hand them to the president of the senate, who, together with the speaker of the house of representatives, shall examine them; and if any one person is elected, he shall, by the president of the senate, be proclaimed duly elected to serve as a senator of this State in the Senate of the United States, for the term of six years from and after the third day of March next succeeding such election; but if no person should be elected, they shall continue to ballot, again and again, until some person is elected: *Provided, however*, if, after five ballotings, there should be no election, the president of the senate may adjourn such election to some future day during the session.

SEC. 3. It shall be the duty of the president of the senate and speaker of the house of representatives to certify to the governor the person elected, whose duty it shall be to give the person so elected a certificate of his election, under his hand and seal of State.

SEC. 4. Senators to fill vacancies that may happen in the Senate of the United States shall be elected as hereinbefore directed in this act; and when any vacancy shall happen during the recess of the general assembly, the governor shall appoint a person to fill such vacancy until superseded by a person elected as hereinbefore directed.

[Other sections apply to the election of representatives.]

PROTEST.

To the Senate of the United States:

The undersigned, duly elected and qualified members of the house of representatives of the general assembly of the State of Indiana, hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on the 4th day of February, A. D. 1857, as senators

of the State of Indiana, in the Congress of the United States, the former for the six years from the 4th day of March next, and the latter for the six years from the 4th day of March, 1855, by a portion of the senators and representatives of said general assembly, for the following reasons :

First. There was no agreement of the two houses of the general assembly, by resolutions or otherwise, to proceed to the appointment or election of senators in Congress on said day, or any other day of the present session of the general assembly.

Second. There was no joint convention of the two houses of the said general assembly on said day ; nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States senators ; nor was there any resolution, or joint resolution, approved or adopted by the two houses of the said general assembly, or either of them, authorizing such joint convention.

Third. Said pretended joint convention was a mere assembly of a portion of the senators and representatives of the said general assembly, not in a legislative capacity, but as individuals, without any authority of law, without precedent in the history of legislature of the State, and having no legislative sanction ; and said senators and representatives, when so convened, had no more constitutional right to appoint or elect senators than any equal number of private citizens of the State.

Fourth. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-three senators and sixty-one representatives, when, by the 11th section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business ; and when, by the law of the State, the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

Fifth. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of the senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

Sixth. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature, had no part or voice in such pretended elections, and the same were in direct violation of the third section of the first article of the Constitution of the United States and the fourth section of the said article.

Seventh. Because said pretended elections are wholly void.

Eighth. Because if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and install in its place any mob which may see proper to take forcible possession of the house as a joint convention of the general assembly, without the concurrence of either body, the sanction of the constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections, and

ask that the Senate of the United States may declare them null and void.

Given under our hands this 4th day of February, at Indianapolis, A. D. 1857.

S. P. Williams,
Geo. Crawford,
James M. Austin,
J. N. Gordon,
C. M. Stone,
H. W. Sherman,
G. D. Wagner,
Thomas J. Neal,
G. K. Steele,
D. Batterton,
Alex. H. Conner,
M. P. Evans,
Wm. C. Jefferis,
S. B. Ward,
J. D. Conner,
Wm. Grose,
A. B. Price,
John Davis,

N. H. Ballinger,
Geo. C. Merrifield,
Silas Colgrove,
Geo. Moon,
William Hawkins,
John Whitcomb,
D. C. Branham,
J. W. Hutchings,
Robert Boyd,
John M. La Rue, Tippecanoe
county,
Marcus C. Smith,
Elijah Vansandt,
Smith Vawter,
Wm. M. Clapp,
R. N. Todd,
Milton Mercer.

ANSWER OF MR. FITCH.

The undersigned, a senator of the United States from the State of Indiana, and now acting as a duly qualified senator of the United States, submits to the honorable the Judiciary Committee of the body to whom the validity of his election has been referred, the following, as points upon which he believes and is advised that his own rights and the rights of his State require that evidence be taken and be before the committee, in order to enable them to decide understandingly and justly in the premises:

First. That he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention.

Second. That he was elected, whilst in such joint convention, by a majority of the legally qualified members of the senate of the State, and of the legally qualified members of the house of representatives, respectively.

Third. That in order to ascertain the facts stated in the preceding point, he will be able, by evidence, to show that three of the persons who are contesting his election were not then, and are not now, legally members of the said State senate, and had no right whatever, under the laws and constitution of the State, to be considered, or, in any particular, to act as members of that body; and that this was at the time, and still is, well known to other contestants.

Fourth. That in the organization of said State senate, according to the constitution, laws, and usage of the State, the lieutenant governor

presides and superintends the admission of the members, and the taking the required oaths of office. That upon this occasion, in violation of such constitution, laws, and usage, the said three members, who were without the expressly required credentials of election, the certificate of the proper and only returning officer, and whose seats were also known to be contested, and on grounds of fraud, also, known to be true, were, by the presiding officer, chosen for the purpose by the members of the senate, designated as republicans, contrary to all law, and by naked wrong directed, notwithstanding, to be sworn in, and for the clear purpose, illegal and fraudulent in fact, of defeating an election of senators of the United States.

Fifth. That the said convention by whom, as hereinbefore alleged, the undersigned was elected a senator of the United States, was assembled in accordance with an express provision of the constitution of the State, and that, in accordance with the long and uniform usage of the State in that particular, the same was adjourned from day to day by the proper presiding officer thereof, and vested with the authority so to adjourn, and that each adjournment was made without objection by a majority of the senate, even considering the three persons aforesaid to have been members of that body being present.

Sixth. That there is not now, in said State, as the undersigned is advised, any law for the regulation of the election of senators of the United States, or in any way providing for the same; and that according to the best professional and judicial opinions in the State, the election is to be made by the convention of the legislature assembled under the constitution of the State, to count the votes and decide upon the election of governor and lieutenant governor, as a power necessarily existing in the legislature, and from the obligations of the State to elect senators.

Seventh. That before the adoption of the present State constitution there was a law regulating such election, and that although the same was no longer in force the said convention did, as far as it was possible, conduct the present election according to the provisions thereof.

The undersigned, in conclusion, submits what, indeed, must be obvious to the committee, that as the witnesses and proofs to the matters above stated are only to be had in the State of Indiana, and can only properly be obtained by careful examination, and under the superintendence of himself, that it cannot be in his power to procure it at this or the approaching extra session of the United States Senate, even were he to abandon his duty as a senator, which he has no right to do, and proceed at once to the place where the testimony is to be had. He further submits, therefore, that the committee will so dispose of the matter now as will enable him and the contestant at a future period to present the entire case fairly and fully before them.

GRAHAM N. FITCH.

FEBRUARY 25, 1857.

True copy—attest:

THOS. P. MORGAN,
Clerk to the Committee.

PROTEST OF HOUSE MEMBERS.

Mr. SPEAKER: The undersigned hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on this day, as senators of the State of Indiana in the Congress of the United States, the former for six years from the 4th of March next, and the latter for six years from the 4th of March, 1855, by a portion of the senators and representatives of the general assembly, for the following reasons:

1. There was no agreement of the two houses of the general assembly, by resolution or otherwise, to proceed to the appointment or election of senators in Congress on said day, or any other day of the present session of the general assembly.

2. There was no joint convention of the two houses of said general assembly on said day, nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States senators, nor was there any resolution or joint resolution approved or adopted by the two houses of the general assembly, or either of them, authorizing such joint convention.

3. Said pretended joint convention was a mere assemblage of a portion of the senators and representatives of the general assembly, not in a legislative capacity, but as individuals without any authority of law, without precedence in the legislative history of the State, and having no legislative sanction; and the said senators and representatives, when convened, had no more constitutional right to elect or appoint senators than any equal number of private citizens of the State.

4. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-four senators and sixty-two representatives present; when, by the eleventh section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business; and when by the law of the State the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

5. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

6. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature had no part or voice in such pretended elections, the same was in direct violation of the third section of the first article of the Constitution of the United States, and the fourth section of the same article.

7. Because said pretended elections are wholly void.

8. Because, if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and install in its place any mob which may see proper to take forcible possession of the house as a joint convention of the general assembly, with-

out the concurrence of either body, the sanction of the constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections.

Given under our hands, at Indianapolis, this 4th day of February, 1857.

G. D. Wagner,
William Grose,
J. W. Gordon,
J. D. Conner,
D. C. Branham,
M. P. Evans,
T. B. Slop,
M. Mercer,
J. M. Austen,
Geo. Crawford,
Wm. C. Jeffries,
R. N. Todd,
H. W. Shuman,
Thos. J. Neal,
Wm. Clapp,
Alex. H. Conner,
Geo. K. Steele,
S. B. Ward,

J. P. Williams,
G. C. Merrifield,
D. Batterton,
Elijah Vandersandt,
John Whitcomb,
A. B. Price,
John Davis,
Silas Colgrove,
Wm. Hawkins,
Robt. Boyd,
Marcus C. Smith,
A. McDonald, of Lake,
N. H. Ballenger,
Geo. Moon,
J. W. Hutchins,
J. M. La Rue,
Smith Vawter.

STATE OF INDIANA, }
Marion county. } ss.

Be it remembered, that on this 5th day of February, anno Domini 1857, personally appeared before me, the undersigned, a notary public in and for said county and State aforesaid, William Grose and George D. Wagner, and made oath that it is true, as stated in the foregoing protest, that the house of representatives of the State legislature, now in session, did not, in any way whatever, by vote, resolution, or otherwise, make any expression in favor of entering into a joint convention for the purpose of the election of United States senators; that the foregoing protest is a true copy of the original, signed by thirty-five of the members of the said house of representatives, with their genuine signatures thereto, and entered upon the journal of said house in the proceedings of this day; that at the pretended joint convention there were twenty-three State senators voting for said Jesse D. Bright and Graham N. Fitch, and no more, and one other senator present but refusing to vote. And sixty-two of the members of the said house of representatives were present and participating in said pretended convention, sixty of whom voted for said Bright and Fitch, and no more, being less than a quorum of the said house of representatives, and less than a majority of the State senators; that these affidavits are also two of said protestants and members of said house of representatives, and that the facts, as stated in said protest, are true in substance and

matter of fact, to the best of the knowledge and belief of these affiants; and further they say not.

WILLIAM GROSE,
GEORGE D. WAGNER.

Witness my hand and notarial seal this fifth day of February, anno Domini 1857.

RICHD. M. HALL, [L. S.]
Notary Public.

RESOLUTIONS OF THE SENATE OF INDIANA.

INDIANAPOLIS, INDIANA,
January 29, 1857.

The senate being in session, Mr. Cravens, the senator from Jefferson, offered for adoption the following preamble and resolution :

Whereas, on the 12th day of January, 1857, whilst the senate was engaged in the discussion of a resolution of the house of representatives, in accordance with section 4 of article 5 of the constitution of this State, which is in the following words, to wit: "The returns of every election for governor and lieutenant governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of *both houses* of the general assembly;" which resolution of the house of representatives had fixed the hour of half-past two o'clock for such opening and counting; *and whereas*, before any decision was had upon said resolution, and before any vote was either taken or demanded upon the same, and one half hour before the time fixed by said house resolution, the lieutenant governor and ex-officio president of the senate and governor elect arose in his place, delivered to the senate a short valedictory, at the close of which he announced in the following words: "*I now repair to the hall of the house*;" whereupon, without adjournment of the senate, or any other action of the same in relation thereto, he, the said president, descended from the rostrum, and immediately proceeded from the senate chamber, followed by a *minority* of the senate;

And whereas a majority of the fifty senators of which this body is composed, as provided by the constitution of this State, remained in session and under a call of the senate, when it was ascertained that a majority was, but a quorum of two-thirds, as provided by the constitution, was not present, a resolution embodying said facts was introduced and made part of the record of the senate;

And whereas this senate continued in session until the return of the absent members, when the aforesaid resolution, with a pending amendment, was concurred in by the senate;

And whereas it has been told to the senators, or a majority of the members of this house, that during the absence of the minority of the senators, a meeting was held in the hall of the house of representatives, at which said meeting the returns of the election for governor

and lieutenant governor are said to have been opened and published, and at which said meeting, it has also been said, that the lieutenant governor, *ex-officio* president of the senate and governor elect, was inaugurated as governor ;

And whereas, when the so-styled inauguration and induction into office of the governor elect, the said president of the senate is also reported to have called to the chair, as presiding officer of said meeting, one of the minority senators, which senator, after the so-called ceremonies of inauguration had been concluded, without authority or instructions so to do by said meeting, is said to have pronounced the *joint convention* adjourned to meet again at 2 o'clock p. m. on Monday, the 2d day of February next ;

And whereas there has not been, during the present session of this general assembly, any *joint convention*, or any determination therefor, or action in relation thereto by this senate ; and whereas any joint convention of the two houses of the general assembly must necessarily consist of a quorum of each house—neither house being competent to the transaction of any business in a separate and independent capacity without a quorum, which consists of two-thirds of the members elect—such competency could not be conferred or derived by any meeting of the minority of the senators with the members of the house or the house as such ; and whereas it is reported that at such adjourned meeting, or *so-called* joint convention, it is the design to elect two United States senators ;

And whereas any such election, by any such unauthorized, illegal, and unprecedented meeting or body, would be inconsistent with the character of this general assembly, in violation of the constitution of this State—which does not contemplate or provide for any joint convention for any such election or purpose—insulting to this senate, and highly disrespectful to the Senate of the United States, in view of its recent decision in a like case, and disorganizing and revolutionary in its character ; therefore—

Be it resolved, That this senate does disclaim any knowledge of, or participation in, any meeting or so styled joint convention for the above or any other purpose ; and if, at any adjourned meeting of said body, it is proposed to have any election for United States senators, or other officers, or to transact any other business which it might be competent for, or the duty of, this general assembly to elect or perform, this senate does hereby most solemnly and earnestly protest against any such action as wholly unauthorized by this house, without its knowledge, consent or concurrence, and that we will here, as elsewhere, now and forever, repudiate and disown such act or action as flagrantly illegal, and a fraud upon the sovereignty of the people and State of Indiana.

Mr. Tarkington moved to refer the preamble and resolution to the committee on the judiciary.

Ayes 21 ; nays 20.

The question recurred on the adoption of the preamble and resolutions.

Those who voted in the affirmative were—Messrs. BEARSS, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Free-

land, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

Those who voted in the negative were—Messrs. Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller McCleary, McLure, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods—20.

So the preamble and resolution were adopted.

STATE OF INDIANA, }
Marion County, } ss.

We, Jonathan S. Harvey, principal secretary of the senate of Indiana, and James N. Tyner, assistant secretary of the same, now in session, do solemnly and severally swear that the annexed and foregoing is a true copy of the preamble and resolution introduced into said senate, and the action of the senate thereon, as appears by the journal thereof, and that said journal is correct, so help us God.

JONATHAN S. HARVEY,
JAS. N. TYNER.

Subscribed and sworn to before me, George H. Chapman, a notary public in and for the county of Marion and State of Indiana, this third day of February, A. D. 1857, as witness my hand and official seal.

GEO. H. CHAPMAN, [SEAL.]
Notary Public.

We, the undersigned, senators of the State of Indiana, do hereby certify that the foregoing preamble and resolution, and action of the senate of Indiana thereon, are in all respects true as above stated.

David Crane,
J. F. Suit,
J. F. Parker,
John Green,
Isaac Kinley,
Jno. R. Craven,
Solomon Blair,
P. S. Sage,
John Weston,
J. F. Stevens,
Daniel Hill,
John T. Freeland,
Lewis Burk,
ISAAC A. Rice,

Stanley Cooper,
John Thompson,
A. S. Griggs,
L. H. Crouse,
A. W. Hendry,
G. W. Chapman,
D. R. Bearss,
J. S. Bobbs,
M. H. Weir,
John Yaryan,
C. D. Murray,
S. T. Ensey,
Walter March.

Protest of Indiana Senators.

FEBRUARY 5, 1857.

Whereas, on the second day of February, 1857, there was held in the hall of the house of representatives a meeting purporting to be composed of certain members of the general assembly, which, it is said, was an adjourned meeting of a so-styled joint convention referred to, and characterized, in a certain preamble and protest presented to and entered upon the journal of this senate, January 29, 1857;

And whereas said meeting neither entered upon, entertained, or did any other business than, like "the king of the French, with his forty thousand men, march up the hill and then march down again," simply assemble, and, without vote, decision, or order therefor, by the self-constituted, self-elected, or self-chosen president thereof, adjourn to meet again on the fourth day of February, without the specification of any object, reason, or design for such adjourned meeting;

And whereas, on the fourth day of February aforesaid, at the hour of 10 o'clock a. m., and whilst this senate was engaged in a regular session in the transaction of its business, the Hon. A. A. Hammond, lieutenant governor and *ex officio* president of the senate, of his own act, did interrupt and suspend the order of business, to announce that the hour had arrived for repairing to the hall of the house to go into joint convention;

Whereupon, as on the former occasion referred to in the preamble and resolution of the aforesaid 29th January, the said lieutenant governor vacated his seat as the presiding officer of this senate, and left the senate chamber, attended by a few of the members of this body, between whom and the presiding officer there seemed to be a perfect understanding, as though both were alike moved by a common impulse—no such convention, and no reason, demand, or call for such convention being known to this senate, nor any action to which this senate has ever been a party being had for the organization of such so-called joint convention;

And whereas, when the lieutenant governor, with his attendant senators had left this chamber, it is understood that a meeting of the said lieutenant governor and senators, with a certain number of gentlemen, members of the house of representatives, in the hall of the said house of representatives, over which so-called joint convention, without election, appointment, or expressed desire so to do by the members thereof, it is said that the lieutenant governor presided;

And whereas, at said meeting, it is further reported, and by some believed to be true, that a sham, illegal, fraudulent, and disgraceful attempt at an election for two United States senators was had, which, if correctly reported, resulting, as it is said to have done, in the choice by such assembly of Jesse D. Bright and Graham N. Fitch as such senators, can only be regarded as an informal expression of the profound devotion of partizan friends for which expressive election, so significant as it was of party and personal fidelity, neither this general assembly, the laws, nor constitution of this State are in anywise responsible, neither having been consulted nor made parties to the transaction in any respect or manner whatsoever;

And whereas, in order that the said lieutenant governor might avail himself of the opportunity of assuming the right of power to preside over the deliberations of said meeting, or unauthorized joint convention, he did, without permission from this senate, leave the chair; which, it is also assumed by said lieutenant governor, is, and was an adjournment of this body, which assumption is in direct contravention of the constitution of this State.—(Art. IV, sec. 10, wherein it is declared that "each house when assembled shall determine its own rules of proceeding, and sit upon its own adjournment;")

And whereas, any action of the president of this senate, or its members, in any such meeting as aforesaid, is, and was, in direct conflict with rule fifty-four of the standing rules of this senate, which reads as follows: "In all joint meetings of the two houses of the legislature, convened for a specific purpose, it shall be incompetent for this body, or its members, to engage in such joint meeting in the transaction of any other business than that for which they were so specifically assembled."

No joint meeting having been agreed upon by or between the two houses of this general assembly nor any declared business or object of such assembly;

And whereas, during the time such unauthorized and unlawful meeting was engaged in such illegal election, this senate was in session, a presiding officer having been appointed *pro tem.*, until the same was adjourned by a vote of its members, as will be seen by reference to its journal;

And whereas such so-called joint convention was not called into existence by any action to which this senate was a party, nor even composed of a quorum of either house of this general assembly, but deriving its powers and vitality from violence, disorder, and fraud: we do, therefore, *most solemnly and earnestly protest* against the action, doings and resolves of said so denominated joint convention, and on behalf of the *people* and sovereignty of this State would invoke the indignation and judgment of all men, whether in authority or as citizen subjects, upon any and all such elections, *as unconstitutional, revolutionary and void*, and would further ask this senate to direct its secretary to transmit, immediately, two copies of this preamble and protest to the United States Senate, one to the president of that body, and the other to Judge Trumbull, senator from the State of Illinois.

John R. Cravens.

D. R. Bearss.

Walter March.

John Green.

Solomon Blair.

G. W. Chapman.

Isaac Kinley.

John Thompson.

A. W. Hendry.

John T. Freeland.

Stanley Cooper.

Isaac A. Rice.

James F. Suit.

James F. Parker.

Daniel Hill.

John S. Bobbs.

D. H. Crouse.

J. F. Stevens.

C. D. Murray.

Lewis Burk.

John Yaryan.

M. H. Weir.

A. S. Griggs.

David Crane.

P. S. Sage.

S. T. Ensey.

John Weston.

