

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.

MR. BUTLER made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the credentials of the Hon. James Harlan, and the protest of the Senate of Iowa, have had the same under consideration, and submit the following statement.*

The following proceedings were had in the legislature of the State of Iowa in the election of a United States senator :

SATURDAY, DECEMBER 9, 1854.

“ *Resolved*, (the senate concurring,) That the house of representatives will meet the senate in the hall of the house on Tuesday next at 2 o'clock p. m., for the purpose of electing a senator of the United States and judges of the supreme court.

“ On motion,

“ The resolution was laid on the table.”

DECEMBER 12, 1856.

Resolution fixing the time for the election of a United States senator was taken up and amended so as to fix Friday, the 15th instant, as the day for an election.

“ Message from the senate, by Mr. Rankin, their secretary :

“ *Mr. Speaker* : I am instructed by the senate to inform the house that the senate has concurred in the house resolution to go into joint ballot on Friday, the 15th instant, for the purpose of electing a United States senator and supreme judges, with the following amendment, viz : to strike out the words Friday, the 15th instant, at 2 o'clock, and insert this—Wednesday evening, at 2½ o'clock.

“ Agreed to.

“JOINT CONVENTION OF THE TWO HOUSES.

The president of the senate acting as president of the convention, and the clerk of the house acting as secretary.”

On motion, the convention proceeded to the election of a United States senator for six years, from and after the 4th day of March next.

“ The president appointed Mr. Workman teller on the part of the

senate. The Speaker appointed Mr. Kinert teller on the part of the house."

The convention proceeded to a vote, which resulted in no choice.

The convention proceeded to a second ballot, which resulted in no choice.

The convention adjourned until to-morrow at 10 o'clock.

#### DECEMBER 14, 1854.

By order of the president the roll of the convention was called.

Same tellers as yesterday.

Motion to adjourn until Thursday next at 10 o'clock.

Motion prevailed.

"The President announced the convention adjourned until 10 o'clock a. m. Thursday, December 21."

#### THURSDAY, DECEMBER 21, 1854.

Joint convention of the two houses; the president of the senate acting as president of the convention, and the clerk of the house acting as secretary.

Same tellers acting.

The president having announced the purposes of the convention, and directed the roll to be called—

"The convention proceeded to vote for a United States senator for the term of six years, from and after the 4th day of March next."

After several ballots, without making a choice, the convention adjourned until the 5th day of January, 1855.

#### FRIDAY, JANUARY 5, 1855.

Convention met.

The president announced the purposes of the convention.

After several ineffectual ballots, on motion, the convention adjourned until to-morrow morning 10 o'clock.

#### SATURDAY, JANUARY 6, 1855.

"It being the hour of 10 o'clock a. m., the speaker of the house announced the same, and the special order to be a joint convention of the senate and house of representatives, pursuant to adjournment, for the purposes of electing a United States senator and judge of the supreme court.

"A committee of three was appointed to wait upon the senate, and inform that body that the house of representatives was now ready to receive the senate in joint convention," &c.

"The committee appointed to wait on the senate reported that they had discharged that duty, by proceeding to the senate chamber and delivering their message, and informing the secretary of the senate thereof. That the secretary informed the committee that the senate had adjourned over to Monday next.

"A number of the members of the senate entered the hall of the house without their president and took their seats.

"The speaker announced that the joint convention of the senate and house of representatives was now in session, pursuant to adjournment, for the purposes of electing a judge of the supreme court and a United States senator.

"Mr. Samuels rose to a question of order, to wit: Was the joint convention properly convened? The speaker announced that the convention had now convened.

"Mr. Samuels appealed from the decision of the speaker, and asked for the yeas and nays, and insisted on his appeal being decided only by the house of representatives.

"The roll of the joint convention was called, and the following members of the convention answered to their names, being a majority of both branches of the general assembly.

[Here follows the names of 57 members.]

"Those members of the convention and members of the house of representatives, except Mr. Franklin excused, who did not answer to their names, refused to answer, or retired from the hall during the call of the roll.

"The speaker announced that a majority of the members of the general assembly being present, that there was a quorum of the joint convention now convened, pursuant to adjournment, and that the appeal of Mr. Samuels could not be taken to the members of the house of representatives only.

"On motion of senator Anderson, William W. Hamilton, a senator from Dubuque county, was elected president *pro tem.* of the convention.

"The president of the senate still being absent,

"The speaker of the house of representatives in his chair, and the clerk of the house of representatives acting as secretary of the joint convention.

"The roll of the convention was called, and the following members of the convention did not answer to their names, to wit:

[Here follows the names of forty-four members.]

"On motion of Mr. Russell,

"The sergeant-at-arms was directed to notify members of the convention, who had not answered to their names, that the convention was now convened, and to request their attendance.

"Senators Ramsay and Thurston appeared on the floor of the convention, and desired to be considered as not acting in the convention.

"The sergeant-at-arms reported that he had performed his duty, as required by the convention; that a few of the members he could not find.

"On motion of Mr. Conkey,

"Further proceedings under the call were dispensed with.

"Mr. Workman, teller on the part of the senate, being absent,

"Mr. Needham was appointed in his stead.

"Mr. Kinert acting as teller on the part of the house.

"The convention proceeded to the election of a second associate judge of the supreme court; after which "the convention proceeded to the

election of a United States senator for the State of Iowa, for the term of six years, from and after the 4th of March next. \* \* \*

"Mr. Anderson nominated James Harlan, of Henry county.

"The convention proceeded to vote for a United States senator, being the ninth vote, which resulted as follows:

"Those voting for James Harlan were—

[Here follows the names of fifty-two members.]

"Messrs. Clark, of Marion, and Neely voted for Bernhart Henn; Mr. McCachran voted for Wm. McKay; Mr. Witter voted for James Grant. James Harlan having received a majority of all the votes cast, and a majority of the whole number of the members of the general assembly, was declared duly elected a senator of the United States, for the State of Iowa, for the term of six years, from and after the 4th day of March next.

"The certificate of election was made out and duly attested in the presence of the convention," &c. \* \* \* \*

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HALL OF THE HOUSE OF REPRESENTATIVES,  
January 6, 1855.

This will certify that, at an election by the general assembly of the State of Iowa, in joint convention, on Saturday the 6th day of January A. D., 1855, James Harlan was duly elected a senator to represent this State in the Senate of the United States for the term of six years, from and after the 4th day of March next.

WILLIAM W. HAMILTON,  
*President pro tem.*

REUBEN NOBLE,  
*Speaker of the House of Representatives.*

Attest:

JOHN R. NEEDHAM, }  
DAVID KINERT, } *Tellers.*

On motion of Mr. Hills, the joint convention adjourned *sine die*, and the members of the Senate retired.

[*Journal of the house of representatives of the State of Iowa.*

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MONDAY MORNING, January 8, 1855.

Mr. Coolbaugh offered the following:

"Whereas, it is reported that the journal of the house of representatives, as read this morning in the presence of the house, alleges that a joint convention of the general assembly of this State was held in the hall of the house on Saturday the 6th instant; and whereas, it is alleged in said journal that said joint convention proceeded to elect one Norman W. Isbell as an associate judge of the supreme court of this State, and one James Harlan as a senator of the United States, for the term of six years from the 4th day of March next, therefore—

*Resolved*, That inasmuch as the senate has no knowledge of any such joint convention, and did not participate in the proceedings, therefore, it hereby protests against the action of the said so-called joint convention, and declares the same to be void and of no effect.

*Resolved*, That a copy of this preamble and resolution be signed by the president and certified to by the secretary of the senate, be presented to the governor of this State, and also a copy forwarded to the presiding officer of the Senate of the United States, with a request to lay the same before that body. Upon the adoption of which, the yeas and nays being demanded were ordered, and were as follows: yeas, 17; nays, 14. The preamble and resolutions were adopted."

[*Journal of the senate of the State of Iowa, 1854-55.*

AN ACT to provide for the election of United States senators and other officers.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That at each and every regular session of the general assembly of this State, next preceding the expiration of the constitutional term of service of a United States senator, or at any session when a vacancy shall exist, at an hour to be designated by a resolution of either branch, with the concurrence of the other branch of the general assembly, the members of both houses thereof shall meet in convention in the hall of the house of representatives, for the purpose of electing a senator or senators by joint vote, in pursuance of the Constitution of the United States, to represent this State in the Senate of the United States.

SEC. 2. The president of the senate, or, in his absence, the speaker of the house of representatives, shall preside over the deliberations of the convention; and in the absence of both, a president *pro tempore* shall be appointed by joint vote.

SEC. 3. At any time prior to meeting in convention as aforesaid, after the time for meeting has been designated as aforesaid, each branch of the general assembly shall appoint one teller, and the two tellers thus appointed shall act as judges of the election.

SEC. 4. The secretary of the senate and the chief clerk of the house of representatives shall each keep a fair and correct record of the proceedings of the convention, which shall be entered upon the journals of each branch of the general assembly. The chief clerk of the house of representatives shall act as secretary to the convention.

SEC. 5. The names of the members of the general assembly shall be arranged by the secretary in alphabetical order, and each member shall vote in the order in which his name stands when thus arranged.

SEC. 6. When the convention shall be organized as aforesaid, the members present shall proceed to choose *viva voce* a senator or senators, as the case may be, to represent this State in the Senate of the United States. The name of the person voted for, and of the mem-

bers voting, shall be entered in writing by the tellers, who shall, after the secretary shall have called the names of the members a second time, and the name of the person for which each member has voted, report to the president of the convention the number of votes given for each candidate.

Sec. 7. If neither of the candidates shall receive the votes of a majority of the members present, a second poll may be taken; and so from time to time, until some one of the candidates shall receive a majority of the votes of the members present.

Sec. 8. If the election shall not be completed at the first meeting, the president shall adjourn the convention whenever and to such time as a majority of the members then present shall determine; and so from time to time, until some one of the candidates shall receive a majority as aforesaid.

Sec. 9. When any person shall have received a majority of the votes aforesaid, the president of the convention shall declare him to be duly elected a senator to represent this State in the Senate of the United States; and he shall, in the presence of the members of both houses, sign two certificates of election, attested by the tellers—one of which he shall transmit to the governor, and the remaining one shall be preserved among the records of the convention, and entered at length on the journals of each house of the general assembly.

Sec. 10. Upon the reception of said certificate, the governor shall cause a credential to be made out, with the great seal of the State affixed thereto, and cause it to be delivered to such senator elect, which credential shall be in form following:

[Here follows the form of the credential.]

*Laws of Iowa, 1847, pages 92 and 93.*

The Constitution of the United States contains the following provision in reference to the election of United States senators:

Sec. 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

And the clause under which the committee are acting, as to the qualification of the gentleman, is as follows:

Sec. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members. \* \* \* \* \*

STATE OF IOWA, to wit:

The general assembly of this State, on the sixth day of January, one thousand eight hundred and fifty-five, having, in pursuance of the Constitution of the United States of America, chosen James Harlan a senator to represent this State in the Senate of the United States, I,

James W. Grimes, governor of the State of Iowa, do by these presents certify the same to the Senate of the United States.

Given under my hand, and the great seal of the State of Iowa, [L. s.] this twentieth day of January, one thousand eight hundred and fifty-five.

JAMES W. GRIMES.

By the Governor :

GEORGE W. McCLEARY,  
*Secretary of State.*

The foregoing statement of facts and recital of clauses of laws and the constitution present all the questions involved in the controversy growing out of the contested election under consideration. From the view which a majority of the committee have taken of these questions, they have come to the conclusion that the sitting member (Mr. Harlan) has not been duly elected a senator of the United States by the *legislature* of Iowa.

*Resolved*, That the seat of the aforesaid gentleman be declared vacant.

A. P. BUTLER,  
*Chairman.*