

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.*

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*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.

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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.

SENATE CHAMBER,  
Indianapolis, Indiana, February 5, 1857.

I, Abram A. Hammond, lieutenant governor of the State of Indiana and *ex officio* president of the senate, do hereby certify that the foregoing is a true and correct copy of the protest, as appears of record on the journal of the senate of the State of Indiana for the 5th day of February, A. D. 1857; and I would furthermore state, that in signing this certificate, I do not wish to be understood as certifying to any of the facts contained in said protest.

ABRAM A. HAMMOND.

STATE OF INDIANA, }  
Marion County, } ss.

We, Jonathan S Harvey, principal secretary, and James N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, do solemnly swear that the annexed and foregoing is a true and correct copy of the protest, as appears of record on the journal thereof for the 5th day of February, A. D. 1857; and that the twenty-seven senators whose names appear in connexion with said protest are all members of the Indiana State senate the present session; and that the said senate has not, by resolution or otherwise, during the present session, given its assent to go into, or participate in, any joint convention for any purpose whatsoever, so help us God.

JOHNATHAN S. HARVEY,  
JAS. N. TYNER.

[L. s.] In witness whereof, I have hereto affixed my hand and notarial seal, this sixth day of February, A. D. 1857.

RICH'D M. HALL,  
Notary Public.

*Extract from House Journal.*

WEDNESDAY MORNING, February 4, 9 o'clock.

House met. The journal was read.

Mr. Blake arose to a question of privilege, objecting to the placing on the journal of the house the protest of Mr. Gordon and thirty-eight others, representatives, from the fact that the protest is not such as is contemplated by the constitution, and, also, that it was couched in censorious and abusive language.

Messrs. Grose and Gordon arose to a question of privilege.

The speaker declared them severally out of order, from the fact that Mr. Blake was now speaking to a question of privilege.

The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them on the right of the speaker's chair.

Upon calling the convention to order, the president, with the consent of the joint convention, appointed Solon Turman secretary thereof, who was duly sworn in as such by the Hon. Samuel Perkins, one of the judges of the supreme court, and entered upon the discharge of his duties.

The chairman addressed the convention as follows:

GENTLEMEN: Pursuant to adjournment on Monday, February 2, 1857, we are assembled in joint convention, under a provision of the constitution of the State of Indiana, and you will now proceed to choose a United States senator, by a "viva voce" vote, to serve as such until the 4th of March, 1861.

Mr. Walpole nominated Graham N. Fitch.

Those who voted for Graham N. Fitch were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetter, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, voted blank—1.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox. Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voted for George G. Dunn—2.

Graham N. Fitch having received a majority of all the votes of the members of the general assembly of the State of Indiana, was declared by the president of the convention duly elected United States senator from the State of Indiana, to serve as such until the 4th of March, 1861.

The president then announced that the joint convention would now proceed to choose a United States senator by a *viva voce* vote, to serve as such from the 4th of March, 1857, until the 4th of March, 1863.

Senator Slater nominated Hon. Jesse D. Bright.

Those who voted for Jesse D. Bright were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetter, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

And the senator from Laporte, Mr. Weir, was present, but refused to vote for any one.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bar-

tholomew, Stiliwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voted for Richard W. Thompson—2.

Jesse D. Bright having received a majority of all the votes of the general assembly of the State of Indiana, was declared by the president of the joint convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1863.

The president then adjourned the joint convention, to meet in the hall of the house of representatives, on Wednesday the 11th instant, at 3 o'clock, p. m.

I certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,  
*Secretary of joint convention.*

On motion by Mr. Walpole, the house adjourned.

At 2 o'clock p. m. the house met.

Mr. Blake offered the following resolution :

*Resolved*, That the committee on the judiciary be directed to inquire whether the protest entered upon the journal of yesterday contains matter inexpedient or scandalous.

Mr. Walpole offered the following amendment :

*Resolved*, That the paper presented to this house by one of the representatives from Marion, on behalf of himself and others, purporting to be what they call a protest, be referred to a select committee of five for said committee to inquire :

1. Whether the same contains the facts?
2. Is it competent for the signers to protest against the acts specified in said paper?
3. Is it decorous towards the senate?
4. Is it truthful and decorous towards individuals referred to?
5. Is it not untruthful in the recapitulation of stated acts?
6. Is it not untruthful as to the acts of the senate and the now lieutenant governor?
7. Is there any constitutional right of a member of one branch of the general assembly to protest against the acts of a joint convention of the two houses? and said committee be instructed to report at an early day of the session.

Pending which—

On motion by Mr. Wright, the house adjourned.

STATE OF INDIANA, }  
Marion County, } ss.

Be it remembered, that personally came before me the undersigned, a notary public in and for said county and State aforesaid, William Grose, and made oath that he is a member of the house of representa-



tives, of which the foregoing transcript purports to be a copy of the proceedings of the same, on Wednesday, the 4th of February, 1857. That the same has been furnished to him by the officers of the said house as a true transcript of the proceedings of said house on the said 4th day of February, 1857, and which he believes to be a true copy of the journal of the house of the proceeding as now recorded and on file in the possession of the officers of said house; and further says not.

WILLIAM GROSE.

Sworn and subscribed to before me.

In witness whereof, I hereunto set my hand and seal notarial, this [L. S.] 12th day of February, 1857.

RICHARD M. HALL,  
*Notary Public.*

TRANSCRIPT OF SENATE JOURNAL, MONDAY JANUARY 12, 1857.

MONDAY MORNING, 9 O'CLOCK.

January 12, 1857.

The senate met.

The journal of Saturday was read.

On motion by Mr. Suit,

*Resolved*, That the committee on the judiciary be instructed to inquire as to the right by which Leroy Woods holds his seat as senator from the county of Clark; and whether he has been elected, appointed to, or acted in, any other official capacity, or held or received the emoluments of any other lucrative office, or office of trust and profit, since his election to the office of senator.

That said committee have power to send for persons and papers and that they report the facts to this senate as soon as possible.

On motion by Mr. Wallace,

*Resolved*, That the judiciary committee be instructed to examine whether there is any statute of this State conferring upon a judge of the supreme court authority to administer oaths, except while sitting as a member of said court; and if so, to cite in their report the volume, page, and section, in which such authority is found; and that they be further instructed to report without delay.

Mr. Wallace offered the following preamble and resolution:

Whereas, on Friday last, upon the reception of the message from the house, inviting the senate into the hall of the house of representatives, to hear the annual message of his excellency Governor Wright, the senate adjourned, on the motion of the senator from Howard, (Mr. Murray,) without action in response to the invitation, whereupon the democratic senators proceeded alone into the house, inside the bar, and heard the message; wherefore, to avoid a similar discourtesy—

*Resolved*, That when the invitation is received from the house to-day informing the senate that the house is ready to go into joint convention to witness the opening and publication of the returns of the election of governor and lieutenant governor, according to the requirements of the constitution, that the senate do forthwith proceed in a

body to the house, for the proper discharge of that duty, without a previous adjournment.

Mr. Freeland moved to lay the preamble and resolution on the table.

The ayes and noes being demanded by Senators Johnson and Fisk, Those who voted in the *affirmative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—26.

Those who voted in the *negative* were—

Messrs. Brown, Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Sage, Slater, (of Dearborn,) Tarkington, Wallace, Wilson, and Woods—21.

So the motion to lay on the table *was agreed to*.

The following resolution was offered by Mr. Suit :

*Resolved*, That the thanks of the senate be, and they are hereby, tendered to Lieutenant Governor Willard for the able, impartial, prompt, and efficient manner in which he has presided over its deliberations and conducted its business.

Which was unanimously agreed to.

By unanimous consent, Mr. Cravens offered the following resolution :

*Resolved*, That when the Senate adjourns, it adjourn to 1 o'clock p. m.

Which was adopted.

On motion by Mr. Murray, the following message from the house was taken up.

A message from the house by Mr. Shook, assistant clerk :

*Mr. President*: I am directed by the house of representatives to inform the senate that the house have passed the following resolution thereof :

*Resolved*, That the senate be invited to attend in the hall of the house of representatives at half-past two o'clock this afternoon, to open and publish the returns of the election for governor and lieutenant governor, as required by the fourth section of the fifth article of the constitution of the State of Indiana, in which the concurrence of the senate is respectfully requested.

Pending which,

The senate adjourned till 1 o'clock p. m.

1 O'CLOCK P. M.

The senate met.

On motion by Mr. Weir,

A call of the senate was ordered.

The secretary proceeded to the call, when it appeared that the following senators were absent :

Messrs. Alexander, Drew, Hill, Mathes, Miller, McCleary, Rugg, and Slater, of Johnson—8.

On motion by Mr. Brown,

Mr. Alexander was excused from the call.

On motion by Mr. Sage,  
Mr. Alexander was excused from all former calls of the senate during the present session.

On motion by Mr. Gooding,

A further call of the Senate was dispensed with.

Mr. March offered the following amendment to the resolution contained in the house message, pending at adjournment :

Amend by striking out "two and a half o'clock," and inserting "three o'clock."

Also, add the following :

"That in said joint convention no other business shall be transacted except that of opening, counting, and publishing the returns of votes for governor and lieutenant governor, witnessing the inauguration, and the administration of the oaths of office ; and when that is done, such joint convention shall stand adjourned *sine die*, without motion."

The president here laid before the senate the following communication :

HALL OF THE HOUSE OF REPRESENTATIVES,  
*Indianapolis, January 12, 1857.*

SIR: Please lay before the senate, over which you preside, the following communication.

BALLARD SMITH,  
*Speaker of the House of Representatives.*

Hon. A. P. WILLARD,  
*President of the Senate of Indiana.*

HALL OF THE HOUSE OF REPRESENTATIVES,  
*Indianapolis, January 12, 1857.*

GENTLEMEN OF THE SENATE OF INDIANA: The constitution of the State devolves upon the undersigned the duty of "opening and publishing the election returns for governor and lieutenant governor" of the State in the presence of both houses of the general assembly.

As the terms of office of those functionaries begin on this day, by appointment of the constitution, I intend to perform that duty in the hall of the house of representatives *instanter*, and respectfully invite you to be present with the house of representatives now in session.

BALLARD SMITH,  
*Speaker of the House of Representatives.*

Pending the motion of Mr. March to amend the resolution, contained in the message from the house, under consideration, the president addressed the senate, announcing that his connexion with the senate, as their presiding officer, had terminated, and closing his remarks at five minutes before two o'clock p. m.

At twenty-three minutes after two o'clock p. m.,

Mr. Cravens moved a call of the senate; which was agreed to.

The secretary proceeded to the call, when it appeared that the following senators were absent:

Messrs. Brown, Drew, Fisk, Freeland, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Parker, Richardson, Rugg, Sage, Slater of Dearborn, Slater of Johnson, Tarkington, Wallace, Weston, Wilson, and Woods—26.

Mr. Cravens offered the following resolution:

*Resolved*, That the hour of half-past two o'clock has arrived, and no quorum being present, the senate cannot entertain any question upon the resolution of the house inviting the senate to participate with the house in witnessing a count of the vote for governor and lieutenant governor and the ceremonies of inauguration, and that this resolution be placed upon the journal of the senate.

No action was taken on the resolution for want of a quorum.

The Hon. Abram A. Hammond, the incoming lieutenant governor of the State of Indiana, now appeared in the chair as the president of the senate, and addressed the senate as follows:

**SENATORS:** By the voice of the people of Indiana, it is made my duty to preside over the deliberations of this honorable senate.

Before entering upon the discharge of this duty, permit me to say that I do so with but a single purpose, and that is so to discharge that duty that you may be enabled the more speedily to complete the legislation of the country.

With the law governing the action of legislative bodies I am not familiar. But I find consolation in the fact that I am surrounded by senators whose wisdom and experience will enable them by their counsels to aid me in correctly deciding all questions of order that may arise in the course of your deliberations, and I respectfully ask of you that counsel and aid. With the hope that your labor may result to the benefit and advancement of Indiana, I take the chair as your presiding officer.

After which, on motion by Mr. Cravens,

The further call of the senate was suspended.

Mr. Slater moved that the senate adjourn. The yeas and nays being demanded by five senators,

Those who voted in the affirmative were—

Messrs. Brown, Drew, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, and Wilson—18.

Those who voted in the negative were—

Messrs. Bears, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Fisk, Freeland, Gooding, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—30.

So the motion to adjourn did not prevail.

Mr. Tarkington moved that the pending amendment to the resolution contained in the message from the house be laid on the table.

The yeas and noes being demanded by Senators Gooding and Wallace,

Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain,

Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the *negative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to lay on the table did not prevail.

Mr. Gooding moved to indefinitely postpone the further consideration of the amendment.

The ayes and noes being demanded by Senators Weir and March,

Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the negative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to indefinitely postpone did not prevail.

Mr. McLain moved to indefinitely postpone the further consideration of the resolution and pending amendment.

The ayes and noes being demanded by Senators March and Gooding,

Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the *negative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to indefinitely postpone *did not prevail*.

Mr. Heffren moved that the senate adjourn.

The ayes and noes being demanded by senators March and Yaryan,

Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McClure, McLain, Richardson, and Wilson—15.

Those who voted in the *negative* were—

Messrs. Bearss, Bobbs, Blair, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Slater of Dearborn, Stevens, Suit, Thompson, Wallace, Weir, Weston, Woods, and Yaryan—30.

So the motion to adjourn did not prevail.

Mr. Slater, of Dearborn, moved to reconsider the vote on the motion to adjourn.

Mr. Yaryan moved to lay the motion to reconsider on the table.

The ayes and noes being demanded by Senators Cravens and Weir,  
Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—7.

Those who voted in the negative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, and Wilson—19.

So the motion to lay the motion to reconsider on the table was agreed to.

The question recurring on the adoption of the resolution contained in the message from the house, with the pending amendment,

The ayes and noes were demanded by two senators.

Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—27.

Those who voted in the negative were—

Messrs. Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Wallace, and Wilson—16.

So the resolution as amended was concurred in.

*Ordered*, That the secretary inform the house thereof.

On motion by Mr. Cravens, the senate adjourned until to-morrow morning, at 9 o'clock a. m.

## B.

STATE OF INDIANA, }  
County of Marion, } ss.

Be it remembered, that, on this the 14th day of February, A. D. 1857, personally came before me, a notary public in and for the county aforesaid, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary, of the senate of the State of Indiana, now in session, who, being by me duly sworn according to law, depose and say: That the foregoing is a true and correct transcript of the journal of the said senate for the 12th day of January, A. D. 1857; that it is a true transcript of the proceedings of the said senate on the said 12th day of January, A. D. 1857; that the said senate did not, as the journal correctly shows, go into the hall of the house of representatives of the State of Indiana on the said 12th day of January, A. D. 1857; that the said senate has not, at any time during the present session, gone into the hall of the said house for any purpose whatever; and that the said house has not sent to the said senate, nor has the said senate sent to the said house, any resolution proposing to go into,

or any invitation to go into, any joint convention for the election of United States senators, or a United States senator, at any time during the present session of the general assembly of the State aforesaid; and that no election has been held by the two houses of the said general assembly for United States senators, or a United States senator, or any other officer elected by the concurrence of the two houses thereof, at any time during the present session. All of which appears by a complete and careful examination of the journal of the said senate for the entire session thereof.

J. S. HARVEY.  
JAC. N. TYNER.

Subscribed and sworn to before me, this 14th day of February, A. D. 1857.

[L. S.] In witness whereof, I hereunto set my hand and notarial seal, at the city of Indianapolis.

RICHARD M. HALL,  
*Notary Public.*

C.

*Affidavit of three senators who were part of the twenty-six found absent on a call of the senate, January 12, 1857.*

STATE OF INDIANA, }  
Marion county, } ss.

Be it remembered, that, on this the fourteenth day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public of the county aforesaid, John T. Freeland, P. S. Sage, and John Weston, who, being duly sworn, depose and say: That they now are, and have been during the present session, senators of the State of Indiana, and holding their seats as such; that on the twelfth day of January last past, at the time a pretended joint convention was being held in the hall of the house of representatives, they were present in the house, having gone there out of mere curiosity to witness the ceremonies of inauguration; that they were not there in the capacity of senators, for the purpose of participating, in any way, in said convention, nor did they in any manner take part in the action thereof.

They further depose and say, that they did not then, nor do they now, recognize the legality of said joint convention; that they never have, at any time or in any way, given their assent as senators to go into a joint convention of the two houses of the general assembly during the present session of the legislature.

And further they say not.

JOHN T. FREELAND.  
P. S. SAGE.  
JOHN WESTON.

Subscribed and sworn to before me, this 14th day of February A. D. 1857.

[L. S.] In witness whereof, I hereunto set my hand and notarial seal, at the city of Indianapolis.

RICHARD M. HALL,  
*Notary Public.*

TRANSCRIPT OF SENATE JOURNAL, MONDAY, FEBRUARY 2, 1857.

MONDAY, 1 o'clock p. m., February 2, 1857.

The senate met.

The president laid before the senate the report of the attorney general in relation to the claim of Moorehead, Hall & Co. against the State of Indiana.

Pending the reading of which by the secretary the president left the chair.

On motion by Mr. Griggs, Senator Burk was called to the chair, as president *pro tem*.

On motion by Mr. Cravens, the rules were suspended and the majority report of the committee on the judiciary, in reference to the right by which the Hon. Le Roy Woods, senator from the county of Clark, holds his seat as such senator, was taken from the table.

The secretary read the following resolution contained in said report, viz:

"Resolved, That Le Roy Woods, by accepting of the office of moral instructor for the State s prison, discharging its duties, and receiving the emoluments thereof since his election as a senator from the county of Clark, has vacated his office of senator, and he is not entitled to a seat in the senate."

On motion by Mr. Cravens, the report was concurred in, and the resolution adopted.

On motion by Mr. Griggs, the senate adjourned.

TRANSCRIPT OF SENATE JOURNAL, WEDNESDAY, FEBRUARY 4, 1857.

WEDNESDAY MORNING, 9 o'clock, February 4, 1857.

The senate met.

The journal of the preceding day was read.

Mr. Helfren moved that the secretary be directed to insert the name of Mr. Woods in the journal of yesterday wherever it should occur in the votes by ayes and noes.

Which motion being entertained by the president, Senators Cravens and Bearss appealed from the decision of the chair, as follows: viz:

"Upon the motion made by the senator from Washington to correct the journal, objection was made that the said motion was out of order; the president decided that the said motion was in order; from which decision we respectfully appeal to the senate."

Pending the discussion on which,

The president left the chair.

On motion by Mr. Suit,

Senator Burk was called to the chair, as president *pro tem*.

The following protest was presented by Mr. Wallace:

"The undersigned protests against any action by a portion of the senators, not a quorum, (the president being absent,) in the joint convention, as not being a senate."

"LEN. WALLACE."



On motion by Mr. Wallace,  
 A call of the senate was directed.  
 Before proceeding to which,  
 On motion by Mr. Suit,  
 The senate adjourned at five minutes after 10 o'clock a. m.

2 O'CLOCK P. M.

The senate met.

The pending question at adjournment being the consideration of the appeal of Senators Cravens and Bearss,

By the unanimous consent of the senate,

Mr. Heffren withdrew the motion to amend, and Messrs. Cravens and Bearss withdrew the appeal.

The question on the resolution offered by the senator from Washington, directing the secretary to strike out a portion of the journal of the 2d instant, being before the senate,

On motion by Mr. Heffren,

The resolution was laid on the table.

Mr. Griggs moved that the senate now adjourn.

The ayes and noes being demanded by five senators,

Those who voted in the affirmative were—

Messrs. Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Drew, Griggs, Heffren, McLain, Richardson, Rice, Rugg, Slater of Dearborn, Suit, and Tarkington—17.

Those who voted in the negative were—

Messrs. Bearss, Blair, Fisk, Gooding, Green, Hargrove, Hendry, Hill, Hostetler, Johnston, Kinley, March, Mansfield, Murray, McCleary, McClure, Sage, Slater of Johnson, Stevens, Thompson, Wallace, Weir, Weston, Wilson, and Yaryan—25.

So the motion to adjourn did not prevail.

The question on the resolution offered yesterday by the senator from Laporte, to adjourn the senate to Thursday morning at 9 o'clock, being before the senate—

On motion by Mr. Suit,

The resolution was laid upon the table.

*Protest of thirty-six representatives against the correctness of the record of the alleged joint convention which elected United States senators. Attested by the assistant clerk of the house.*

We, the undersigned, members of the house of representatives of the State of Indiana, now in session, do most solemnly enter our protest to the following entry upon the journal of the house, which appears in connexion with its proceedings on the 4th day of February, 1857, viz:

The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them, on the right of the speaker's chair.

Upon the calling of the convention to order, the president, with the consent of the convention, appointed Solon Turman secretary thereof, who was duly sworn in as such by the honorable Samuel Perkins, one

of the judges of the supreme court, and entered upon the discharge of his duties.

The chairman addressed the convention as follows:

**GENTLEMEN:** Pursuant to adjournment on Monday, February 2, 1857, we are assembled in joint convention, under a provision of the constitution of the State of Indiana, and you will now proceed to choose a United States senator by a *viva voce* vote, to serve as such until the 4th of March, 1861.

Mr. Walpole nominated Graham N. Fitch.

Those who voted for Graham N. Fitch were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McLain, Richardson, Rugg, Slater of Dearborn, Slater of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, voted blank—1.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voted for George G. Dunn—2.

Graham N. Fitch having received a majority of all the votes of the members of the general assembly of the State of Indiana, was declared by the president of the convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1861.

The president then announced that the joint convention would now proceed to choose a United States senator by a "*viva voce*" vote, to serve as such from the 4th of March, 1857, until the 4th of March, 1863.

Senator Slater nominated Hon. Jesse D. Bright.

Those who voted for Jesse D. Bright were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnson, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Slater of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

And the senator from Laporte, Mr. Weir, was present, and refused to vote for any one.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace,

Walpole, Wiley, Williams of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voting for Richard W. Thompson—2.

Jesse D. Bright having received a majority of all the votes of the general assembly of the State of Indiana, was declared by the president of the joint convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1863.

The president then adjourned the joint convention to meet in the hall of the house of representatives on Wednesday, the 11th instant, at 3 o'clock p. m.

I certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,  
*Secretary of Joint Convention.*

We declare most positively that it is untrue that the senate, preceded by the lieutenant governor, appeared in the house, or that there was any command of the constitution requiring an entry of a portion of the senators into the hall of the house for any such purposes as proclaimed by Mr. Hammond at the speaker's stand. We further declare that the entry of said senators, and the action of a portion of the representatives, in the hall of the house, without any resolution of the house or senate fixing a time and place for a joint convention of the two houses, was not only in violation of the rules and proper decorum of the house, but in direct violation of the laws and constitution of the State of Indiana, as well as the Constitution of the United States.

Therefore we, the undersigned, members of the said house, having had no authority to act in the premises, and refusing to be present on that occasion, hereby protest against any such entry upon the journals of the house, and the doings of the pretended convention, as illegal and void, and ask this our protest, with our reasons therefor, to be entered upon the journal of the house of representatives.

James D. Conner, of Wabash,

Robert Boyd,

M. P. Evans,

Jno. M. La Rue,

George C. Merrifield,

A. McDonald, of Lake.

George Crawford,

William Grose,

J. W. Hutchings,

Smith Vawter,

D. C. Branham,

R. N. Todd,

William Hankins,

George Moon,

Wm. M. Clapp,

T. B. Sloss,

J. P. Williams,

M. Mercer,

Thomas J. Neal,

Elijah Van Sandt,

H. W. Sherman,

Silas Colgrove,

Charles M. Stone,

G. K. Steele,

J. W. Gordon,

N. H. Ballinger,

S. B. Ward,

J. M. Austin,

John Whitcomb,

W. C. Jefferis,

A. B. Price,

John Davis,

D. Batterton,

M. C. Smith,

G. D. Wagner,

A. H. Conner.

STATE OF INDIANA, }  
 Marion county. }

Personally came before me, the undersigned, a notary public in and for said county and State aforesaid, David P. Barner, one of the assistant clerks of the house of representatives now in session at Indianapolis, in said State, and made oath that the foregoing is a true copy of a protest of a portion of the members of said house of representatives as presented to said house this day.

D. P. BARNER.

Witness my hand and seal notarial, this 13th day of February,  
 [L. S.] 1857.

RICHARD M. HALL,  
 Notary Public.

*Sworn statement of twenty-six of the fifty State senators that they did not participate in the so-called joint convention at which United States senators were claimed to have been elected.*

STATE OF INDIANA, }  
 County of Marion, } ss.

Be it remembered, that, on this the 12th day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public for the county aforesaid, Daniel R. Bearss, Solomon Blair, John S. Bobbs, Lewis Burk, G. W. Chapman, Stanley Cooper, David Crane, John R. Cravens, David H. Crouse, Samuel T. Ensey, John T. Freeland, John Green, A. S. Griggs, A. W. Hendry, Daniel Hill, Isaac Kinley, Walter March, C. D. Murray, James F. Parker, Isaac A. Rice, P. S. Sage, John F. Stevens, James F. Suit, John Thompson, John Weston, and John Yaryan, who, being duly sworn by me according to law, depose and say: That they are senators, legally entitled to and now holding their seats as such in the senate of the State of Indiana, now in session; that they, twenty-six in number, compose the majority of said Senate; that they were not present at, and did not in any way participate in, the so-called joint convention said to have been held in the hall of the house of representatives of the State of Indiana on the 4th day of February instant, in which so-called joint convention they have been informed that Graham N. Fitch and Jesse D. Bright were, by the presiding officer thereof, declared elected United States senators for the State aforesaid; that, to the best of their knowledge and belief, the senate of the State of Indiana has not at any time during the present session, by resolution or otherwise, given its assent to go into, or in any way participate in, any joint convention for any purpose whatever; and that on the day, and at the very hour, when the so-called joint convention was said to have assembled, they, the said senators, twenty-six in number, (except Samuel T. Ensey, who was at home attending upon his sick family,)

were in their seats, the senate being in session transacting its regular business.

D. R. Bearss  
Solomon Blair  
J. S. Bobbs  
Lewis Burk  
G. W. Chapman  
Stanley Cooper  
David Crane  
John R. Cravens  
David H. Crouse  
S. Ensey  
John T. Freeland  
John Green  
Algernon S. Griggs

A. W. Hendry  
Daniel Hill  
Isaac Kinley  
Walter March  
C. D. Murray  
James F. Parker  
Isaac A. Rice  
P. S. Sage  
James F. Suit  
John Thompson  
John Weston  
John Yaryan

Subscribed and sworn to before me, on this the 12th day of February, A. D. 1857.

In witness whereof, I hereunto set my name and affix my notarial seal, at the city of Indianapolis.  
[L. s.]

RICHARD M. HALL,  
*Notary Public.*

STATE OF INDIANA, }  
County of Marion, } ss.

Be it remembered, that, on the 12th day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public for the county aforesaid, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, who, being by me duly sworn according to law, depose and say that the twenty-six persons whose names appear in the foregoing affidavit, to wit: Daniel R. Bearss, Solomon Blair, John S. Bobbs, Lewis Burk, G. W. Chapman, Stanley Cooper, David Crane, John R. Cravens, David H. Crouse, Samuel T. Ensey, John T. Freeland, John Green, A. S. Griggs, A. W. Hendry, Daniel Hill, Isaac Kinley, Walter March, C. D. Murray, James F. Parker, Isaac A. Rice, P. S. Sage, John F. Stevens, James F. Suit, John Thompson, John Weston, and John Yaryan, are all members of the senate of the State of Indiana, now in session, and that they are holding their seats as such.

J. S. HARVEY.  
JAS. N. TYNER.

Subscribed and sworn to before me, February 12, A. D. 1857.

In witness whereof, I hereunto set my hand and affix my notarial seal.  
[L. s.] seal.

RICHARD M. HALL,  
*Notary Public.*

*To the Senate of the United States:*

The undersigned, duly elected and qualified members of the general assembly of the State of Indiana, represent to your honorable body that it is important not only to their rights, but to those of the people of the State, that a speedy decision should be made in the case of Graham N. Fitch, who claims to have been elected a member of your body by the legislature of Indiana, on the 4th instant, for the following among other reasons:

1st. As has been shown by the protests, copies of the senate journal, affidavits, &c., which have been forwarded to your honorable body, said Fitch was not elected by the legislature of Indiana, but by a convocation of a portion of the members thereof, not authorized by any law of the State, by resolution adopted by the legislature, by any provision of the constitution of Indiana, or by any provision of the Constitution of the United States.

2d. There is no law in force in Indiana regulating the manner of choosing senators in Congress, except the Constitution of the United States, which, if it were not the supreme law of the land without any legislative enactment on the part of the State, was, by an act of the general assembly of Indiana approved May 31, 1852, declared to be a law governing this State.—(1 R. S., 1852, 351.)

3d. A decision of your honorable body, sustaining the legality and regularity of Mr. Fitch's pretended election, would destroy the existence of the senate of Indiana as an independent branch of the legislative department of the State.

4th. The present session of the general assembly will expire, by constitutional limitation, on the 9th of March next; they therefore pray that you will decide on the pretended claim of Mr. Fitch to hold a seat in your honorable body during your present session, and before the expiration of the present session of the general assembly of Indiana.

INDIANAPOLIS, *February 16, 1857.*

*Senators.*

D. R. BEARSS,  
Solomon Blair,  
Lewis Burk,  
Isaac A. Rice,  
Daniel Hill,  
David Crane,  
A. W. Hendry,  
G. W. Chapman,  
Isaac Kinley,  
John Thompson,  
D. H. Crouse,  
A. S. Griggs,  
M. H. Weir,  
P. S. Sage,

J. F. Suit,  
S. T. Ensey,  
John R. Cravens,  
John Yaryan,  
Walter March,  
John Green,  
John T. Freeland,  
James F. Parker,  
J. F. Stevens,  
Stanley Cooper,  
C. D. Murray,  
J. S. Bobbs,  
John Weston.

*Representatives.*

Wm. Grose,  
 Charles M Stone,  
 Geo. Crawford,  
 H. W. Sherman,  
 S. P. Williams,  
 John Whitcomb,  
 Geo. C. Merrifield,  
 John Davis,  
 G. T. Steele,  
 Wm. M. Clapp,  
 Robert Boyd,  
 Geo. Moon,  
 A. McDonald, of Lake,  
 James M. Austin,  
 Elijah Van Sandt,  
 T. B. Sloss,  
 S. B. Ward,  
 Smith Vawter,

J. W. Hutchings,  
 Milton Mercer,  
 Jno. J. Hayden,  
 Wm. C. Jefferis,  
 Alex. H. Conner, of Hamilton.  
 Jno. M. Larue,  
 William Harkins,  
 R. N. Todd,  
 D. C. Branham,  
 M. P. Evans,  
 N. C. Smith,  
 William Harkins,  
 G. D. Wagner,  
 J. W. Gordon,  
 D. Batterton,  
 Jas. D. Conner, of Wabash,  
 Silas Colgrove,  
 Thomas J. Neal.

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“MONDAY MORNING, *January 12, 1857.*”

“Mr. Lane offered the following resolution :

“*Resolved*, That the senate be invited to attend in the hall of the house of representatives at two and a half o'clock this afternoon, to open and publish the returns of the election for governor and lieutenant governor, as required by the 4th section of the 5th article of the constitution of the State of Indiana ; and that the senate be informed of the passage of this resolution.

“Mr. Grose submitted the following amendment :

“*Resolved*, That the senate be, and is hereby, invited to be present in this hall, to-day at 2 o'clock p. m., to witness the counting, by the proper officers, of the votes for governor and lieutenant governor, and the administration of the oaths, respectively, to said officers. And the business for such meeting is hereby declared to be limited to the business aforesaid, and none other shall be performed, nor motion made or entertained during said meeting, for any other purpose whatever, except to adjourn said meeting without day.

“Mr. Walpole moved to lay the amendment on the table.

“The ayes and noes were demanded by Messrs. Grose and Gordon.

“Those who voted in the affirmative were—

“Messrs. Abel, Adams, Allen, Bethell, Blake, Bowman, Brown,

Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Davis of Sullivan, Dobbins, Douglass, Duncan, Early, Edson, Harrison, Hayden, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Marvin, Modesitt, Moore, McDaniel, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith of Bartholomew, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williamson, Wright, Yater, and Mr. Speaker—54.

“Those who voted in the negative were—

“Messrs. Austin, Ballenger, Batterton, Boyd, Branham, Clapp, Colgrove, Conner of Hamilton, Conner of Wabash, Crawford, Cullen, Davis of Hendricks, Denby, Gordon, Grose, Hutchings, Jefferis, Larue, Mercer, Merrifield, McDonald of Lake, Neal, Price, Shuman, Sloss, Steele, Stone, Van Sandt, Vawter, Wagner, Ward, Whitcomb, and Williams of Lagrange—33.

“So the amendment was laid on the table.

“Mr. Gordon moved to lay the original resolution on the table.

“The ayes and noes were demanded by Messrs. Gordon and Grose.

“Those who voted in the affirmative were—

“Messrs. Austin, Ballenger, Batterton, Blake, Boyd, Branham, Colgrove, Conner of Hamilton, Conner of Wabash, Crawford, Davis of Hendricks, Gordon, Grose, Hutchings, Jefferis, Larue, Mercer, Merrifield, Moon, McDonald of Lake, Neal, Price, Shuman, Sloss, Steele, Stone, Van Sandt, Vawter, Wagner, Ward, Whitcomb, and Williams of Lagrange—32.

“Those who voted in the negative were—

“Messrs. Abel, Adams, Allen, Bethell, Bowman, Branson, Brown, Bryan, Carnahan, Clapp, Clark, Claypool, Conduitt, Crowe, Cullen, Davis of Sullivan, Denby, Dobbins, Douglass, Duncan, Early, Edson, Harrison, Hayden, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Marvin, Modesitt, Moore, McDaniel, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith of Bartholomew, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams of Knox, Williamson, Wright, Yater, and Mr. Speaker—58.

“So the resolution was not laid on the table.

“The resolution was then adopted by unanimous consent.”

“The Speaker made the following announcement from the chair:

“*Gentlemen of the house of representatives:*

“The constitution of the State of Indiana requires that the speaker shall open and publish the returns of the election for governor and lieutenant governor, in the presence of both houses of the general assembly; and as the official term of the governor and lieutenant governor elect commence this day, I have communicated an invitation to the senate to meet the house in this hall, and, in obedience to the constitution, I shall, so soon as the senate appear, proceed to publish the returns for governor and lieutenant governor.



Mr. Kerr offered the following preamble and resolution :

Whereas, the speaker of this house has announced his intention to proceed forthwith in this hall to open and publish the election returns for governor and lieutenant governor, in pursuance of the requisitions of the constitution, and has given the senate notice thereof,

*Resolved*, That the house will attend upon the appointment of the speaker in the discharge of the duties devolved upon them by the constitution, and that seats be provided for the members of the senate on the right of the speaker's seat

*Resolved further*, That the senate be informed of the same, and that the house is now ready to proceed to said business.

Which was agreed to.

The senate then, in pursuance of the invitation of the house, communicated through the speaker, came into the hall of the house, preceded by the president of the senate ; when,

The joint convention was called to order by the president of the senate.

The president then declared—

GENTLEMEN : We have assembled in joint convention, in accordance with the provision of section 4, article 5, of the constitution of the State of Indiana, which reads as follows :

"SEC. 4. In voting for governor and lieutenant governor, the electors shall designate for whom they vote as governor, and for whom as lieutenant governor. 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."

The speaker of the house of representatives will now proceed and publish the returns for the election of governor and lieutenant governor of the State of Indiana.

The speaker of the house of representatives, then, in the presence of both houses of the general assembly, proceeded to open the returns of the votes cast for governor and lieutenant governor of the State of Indiana, on the 14th day of October, 1856, and, on counting all of the votes returned, it appeared therefrom that, for the office of governor :

Ashbel P. Willard had received.....	117,981 votes.
Oliver P. Morton had received.....	112,139 votes.

Ashbel P. Willard, having received a majority of all the votes cast, was, by the speaker of the house of representatives, in the presence of both houses of the general assembly of the State of Indiana, declared duly elected governor of the State of Indiana, to serve as such for the term of four years, from and after the second Monday in January, A. D. 1857.

The president of the senate then called Senator Tarkington to the chair.

Ashbel P. Willard was then sworn into office by Hon. Samuel E. Perkins, one of the judges of the supreme court, and delivered his inaugural address.

“For the office of lieutenant governor, it appeared from the returns aforesaid, that

Abram A. Hammond had received.....	116,717
Conrad Baker had received.....	111,620

“Abram A. Hammond, having received a majority of all the votes cast, was, by the speaker of the house of representatives, in the presence of both houses of the general assembly, declared duly elected lieutenant governor of the State of Indiana, for the term of four years, from, and after the second Monday of January, A. D. 1857.

“Abram A. Hammond was then sworn into office by the Hon. Samuel E. Perkins, one of the judges of the supreme court.

“The president of the joint convention then declared said convention adjourned, to re-assemble in the hall of the house of representatives on Monday the 2d day of February, 1857, at two o'clock in the afternoon.”

“MONDAY, 2 O'CLOCK P. M., *February 2, 1857.*

“The house met.

“The journal was read and adopted.

“In obedience to an adjourned joint convention of the 12th of January, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them on the right of the speaker's chair.

“The lieutenant governor, acting as president of the convention, then stated, that on the 12th of January, in obedience to the requirements of the constitution, the senators and representatives had met in joint convention in this place, and after transacting the business then required of them, had adjourned until this day at 2 o'clock p. m. That in pursuance of this adjournment the convention was now convened. He then declared the joint convention adjourned, to meet within the hall of the house on Wednesday next, at 10 o'clock a. m.”

“WEDNESDAY MORNING, 9 O'CLOCK, *February 4, 1857.*

“The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them on the right of the speaker's chair.

“Upon calling the convention to order, the president, with the consent of the joint convention, appointed Solon Turman secretary thereof, who was duly sworn in as such by the Hon. Samuel Perkins, one of the judges of the supreme court, and entered upon the discharge of his duties.

“The chairman addressed the convention as follows :

GENTLEMEN: Pursuant to adjournment on Monday, February 2, 1857, we are assembled in joint convention, under a provision of the constitution of the State of Indiana, and you will now proceed to choose a

United States senator by a *viva voce* vote, to serve as such until the 4th of March, 1861.

Mr. Walpole nominated Graham N. Fitch.

Those who voted for Mr. Graham N. Fitch, were :

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLean, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, voted blank.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDaniel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of house of representatives—83.

Messrs. Hayden and Wright voted for George G. Dunn—2.

Graham N. Fitch having received a majority of all the votes of the members of the general assembly of the State of Indiana was declared by the president of the convention duly elected United States senator from the State of Indiana, to serve as such until the 4th of March, 1861.

The president then announced, that the joint convention would now proceed to choose a United States senator by a *viva voce* vote, to serve as such from the 4th of March, 1857 until the 4th of March, 1863.

Senator Slater nominated Hon. Jesse D. Bright.

Those who voted for Jesse D. Bright, were :

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLean, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, was present ; refused to vote for any one.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDaniel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voted for Richard W. Thompson—2.

Jesse D. Bright having received a majority of all the votes of the general assembly of the State of Indiana was declared by the president of the joint convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1863.

The president then adjourned the joint convention to meet in the hall of the house of representatives, on Wednesday, the 11th instant, at 3 o'clock p. m.

I certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,  
*Secretary of Joint Convention.*

“ WEDNESDAY, *February 11, 1857.*

“ The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them on the right of the speaker's chair.

“ The president addressed the convention as follows:

“ GENTLEMEN: The joint convention now meets pursuant to adjournment, on Wednesday, February 4, 1857. The convention having, at its preceding meeting, elected two United States senators, and there being now no further business to transact, I declare the same adjourned, *sine die.*

“ I hereby certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,  
*Secretary of Joint Convention*