

Kingsley, G. B. 1858
Dunham, W. N

December 4, 1857.] HOUSE OF REPRESENTATIVES.

13

Resolved, That the Chief Clerk of the House of Representatives be, and he is hereby instructed, to subscribe for such newspapers printed in Minnesota, as the respective members of the House may direct, to the number of ten (10) copies daily, or their equivalent in weeklies, for each member

Mr. Dow moved to strike out the word "ten" and insert the word "three," which was agreed to.

The resolution, as amended, was adopted.

Mr. Bradley presented the petition of George B. Kingsley, contesting the seat of Wm. M. Dunham, of the Fourteenth District, composed of Freeborn and Faribault Counties, and moved that a committee of three be appointed to investigate the matter.

The Speaker named Messrs. Bradley, Wakefield and Bray as said Committee.

Mr. Dow offered the following resolution, which was adopted :

Resolved, That the special Committee appointed to investigate and report on the claims of G. B. Kingsley to the seat now held by Mr. Dunham have power to send for persons and papers, and compel the attendance of witnesses.

Mr. Eames, of Fillmore, offered the following resolution, which was adopted :

Resolved, That the Chief Clerk be authorized to procure stationery for the Clerks of the House.

Mr. Dow offered the following resolution :

Resolved, That the Clerk give to each member of the House a certificate which shall entitle him to purchase stationery to the amount of ten dollars, at the charge of the State.

Mr. Starkey moved to amend by striking out the word "ten" and inserting the word *twenty* in lieu thereof.

Mr. McGrorty offered an amendment to the amendment, to insert *seven* instead of "twenty" in the resolution.

Mr. Bradley moved to lay the amendments and resolution upon the table.

And the yeas and nays being called for and ordered, there were yeas 21, nays 51, as follows :

Those who voted in the affirmative were :

Messrs. Atkinson, Bartlett, Bradley, Butters, Campbell, Chase, Crutenden, Cummings, Davern, Foster, Frost, Gaskill, Hawkins, Kibler, Libbey, Mackintire, Pierce, Rehfeld, Stevens, Tuttle, and Wakefield.

Those who voted in the negative were :

Messrs. Balcombe, Bearce, Bevans, Bray, Burgess, Carpenter, Chowen, Crosby, Decow, Dow, Eames, Fladeland, Gibson, Graham, Grover, Heyd, S. R. Johnson, Smith Johnson, Keith, Kinghorn, Le Blond, Locke, Lord, Masters, McGrorty, Murphy, O'Neill, Otis, Parker, Peckham, Pettie, Poehler, Powers, Randall, Rauch, Rutan, Scofield, Seeley, Simpson, Sheetz, Star-

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Messrs. Atkinson, Bacon, Bartlett, Bearce, Bray, Burgess, Butters, Carpenter, Chase, Chowen, Cummings, Decow, Dow, Eames, Foster, Gas-kill Gibson, Graham, Grover, Hawkins, Hanson, Hinkley, Heyd, Smith Johnson, Kibler, Kinghorn, Le Blond, Leonard, Libbey, Locke, Lyle, Masters, McGrorty, Murphy, O'Neill, Otis, Parker, Pettie, Pierce, Poehler, Powers, Randall, Rauch, Rutan, Scofield, Seeley, Simpson, Sheetz, Tattersall, Talbot, Tefft, M. Tompson, Townsend, Tuttle, Wakefield, Willson, Young, and Mr. Speaker.

Those who voted in the negative were, Messrs. Bevans, Keith, Mackintire, Peckham, Rehfeld, Starkey, Stevens, T. A. Thompson, Vertress, and Way.

The report was adopted.

On motion of Mr. Chase, the House adjourned to 10 1-2 o'clock on Monday.

GEO. BRADLEY, Speaker, *pro tem*,

Attest :

A. T. CHAMBLIN, Chief Clerk.

REPORT OF THE COMMITTEE OF THE CONTESTED SEAT OF W. N. DUNHAM.

The Committee to whom was referred the petition of George B. Kingsley, claiming to be allowed the seat in the House now held by W. N. Dunham, have attended to the duties assigned them, and beg leave to submit the following Report :

The Committee have given the subject the fullest investigation that circumstances would allow. In the outset it was determined to grant sufficient time to the parties to obtain all the testimony they might see fit to introduce ; and to this end a continuance of two weeks' time was allowed to obtain the attendance of witnesses. No witnesses having appeared at that time, a still further extension of time was granted, and the Committee went into a hearing of the case only when it became evident to them that further delay would not subserve the interest of either of the parties.

At the commencement of the investigation the Committee determined by suggestion of the counsel for both parties to go behind the canvass of the Board of Canvassers, and investigate the case to its fullest extent. This they believed to be their right under the Constitution, Article 4, Section 3, which makes each House the judge of the election returns and eligibility of its own members. Some of the testimony presented to the Committee has not been included in this report, because either it was not pertinent to the merits of the case, or because the same facts were shown by better testimony. All that evidence will be found, however, on the file accompanying this Report. The conclusions of the Committee are based solely upon the evidence included in the Report.

The Committee regard the action of the Board of Canvassers as illegal, and they are uananimously of the opinion that in rejecting the votes of Precinct No. 5 they transcended their powers. The Board of Canvassers are ministerial officers, and should act in that capacity only. Their duties are marked out by the statute, and they should in no case go beyond the plain letter of their statutory instructions. The statutes of

Minnesota, Chapter 5, Section 43, provides that "No election returns shall be refused by any Clerk of the Board of County Commissioners for the reason that the same may be returned or delivered to him in any other than the manner directed in this Chapter; nor shall he refuse to include any returns in his estimate of votes, for any informality in holding any election, or making the returns thereof; but all returns shall be received, and the votes canvassed by such Clerks, and a certificate given to the person or persons who may by such returns have the greatest number of votes." Had the Board regarded the regulation above quoted, the position of the parties in this contest had been reversed.

Casting out the vote of Precinct No. 5 in Freeborn County, your Committee find that George B. Kingsley received four hundred and nineteen votes for Representative to the State Legislature.

The evidence of this is the certificate of the Register of Deeds of the senior county of the Representative District under the seal of his county and on file accompanying this Report and marked A.

The vote of Precinct No. 5, as returned to the register of Freeborn County and also to the Secretary of the Territory, gives W. N. Dunham nine votes and George B. Kingsley thirty-seven votes. For evidence of this, see certificate of Register of Freeborn County; also the original poll-books and returns from said Precinct, accompanying this Report and marked respectively B. and C.

The whole question, then, in this case, is, in the opinion of your Committee, whether the votes cast in Precinct No. 5 should be counted or rejected: in other words, whether the irregularities attending the canvassing the votes and making up the returns were such as to invalidate the whole proceedings and disfranchise the voters in that Precinct. The facts in the case as evolved by the Committee are substantially as follows:

Two of the Judges of Election attended at the time and place of holding the election, and proceeded to organize their Board by the election of one James Cottrell to fill the vacancy caused by the absence of the third Judge. The Judges then took the oath of office—Patrick Fitzsimmon, one of the Judges, a magistrate, administering the oath to the other two; and James Cottrell, the third Judge, administering the oath to Patrick Fitzsimmons. The polls were then opened, and votes received. The ballot-box was divided into three compartments—one for the reception of the State tickets, one for County tickets, and another for the reception of District tickets. These last were in some instances separate tickets, and were for Senator, Representatives, Clerk of District Court, and Judge of Probate.

A distinct District ticket was not necessary, the officers named on it belonging either upon the State or the Territorial ticket; and the distinction, it seems to your Committee, was the cause of the error in voting.

Upon counting the votes it was found that there were nine more votes for the District officers, including the parties in this contest, than there were names of voters upon the poll books. The proper course to pursue under such circumstances, is to draw out from the ballot box, unopened, and destroy publicly, so many ballots as shall be equal to such excess.—Rev. Stat. chap. 5, sec. 29.

This course was proposed by one of the Judges, but was objected to by another on the ground that the Judges had no right to destroy any votes,

but must make their returns according to the votes found in the ballot-box.

This was accordingly done, and Geo. B. Kingsley was found to have thirty-eight votes, and W. N. Dunham seventeen votes for State Representative. This return was made up and sealed and delivered to Patrick Fitzsimmons, one of the Judges, to be by him delivered to the Register of Freeborn County. Mr. Fitzsimmons at that time stated that he should not deliver said returns to the Register of Deeds till he had taken advice as to the legality of their proceeding.

It is proper to state here that no Statutes or instructions were within reach of the Judges.

Mr. Fitzsimmons accordingly took the advice of a Mr. Armstrong, at Albert Lea, and upon his advice called the Board together to amend the returns.

At the time when they were called together, Mr. Cottrell did not appear, having, in the meantime, ran away from the country. The two remaining Judges and the Clerks proceeded to amend the returns, and upon the suggestion of Mr. Proebstein, one of the Judges, who, it appears, thought he knew where the excess of votes came from, eight votes having the name of Mr. Dunham upon them, and one with the name of Mr. Kingsley upon it, were thrown out, and the returns made up accordingly. These changes were made without recounting the votes.

For evidence of the facts above stated, see testimony of Mr. Patrick Fitzsimmons, on file and marked D. Also the returns first made by the Judges, on file and marked E.

The course pursued by the Board of Judges in Precinct No. 5, in amending the returns, was not in accordance with the Statute provided in such cases. Your Committee, however, are convinced (and no claim to the contrary has been made by either party) that the Judges acted honestly and in good faith, and the fault arose solely from a misapprehension on the part of said Judges, as to their duties.

The only question, therefore, as the Committee believe, to be decided is, whether the irregularities above shown should disfranchise the voters of Precinct No. 5. Upon this point the Committee have examined such precedents as could be obtained, and have unanimously come to the conclusion that the irregularities were not such as should invalidate the vote. It is clear that if the proper course had been pursued and votes drawn from the box, and destroyed, unopened, the most favorable result to the sitting member (Mr. Dunham) possible, would have been that all the votes so destroyed should be those cast for his opponent, Mr. Kingsley.

As has been shown, the ballots before the box was purged, or rather when the box was opened, showed :

For Geo. B. Kingsley,	- - - - -	38 votes.
“ W. N. Dunham,	- - - - -	17 “

Making a total of - - - - - 55 “

Or nine more than there were names of voters on the poll-book.

Deduct this excess of nine votes from the votes cast for Mr. Kingsley, and it will leave the result:

For Geo. B. Kingsley, - - - - - 29 votes.
 " W. N. Dunham, - - - - - 17 "

Add the 29 votes for Kingsley, to the number 413, received by him elsewhere in the District, and add the 17 votes for Dunham to the number 419, received by him elsewhere in the District, and the vote will stand :

For Geo. B. Kingsley, - - - - - 442 votes,
 " W. N. Dunham, - - - - - 436 "

Leaving Mr. Kingsley a clear majority of six votes.

The principle in regard to the effect of irregularities in holding elections seems to be, that where the law is directory, no neglect or mistake or even improper conduct or irregularity on the part of the Judges, will be fatal though frequently punishable by law, if in other respects there has been a substantial and good election. Among the cases referred to, are such as where instead of "a box locked or otherwise well secured," a gourd was used, carefully stopped and tied up in a handkerchief, as in the case of *Arnold vs. Lea*.—*Clark & Hall's Rep.* 601. Where there was an omission to give the notice required by law, to two inconsiderable places, within an election District. Where the returning officers did not meet to make their returns till after the time required by law. Where the Poll Clerks were not sworn till after the election, or were not sworn at all, and several other cases of a like kind, cited in "*Cushing's Law and Practice of Legislative Assemblies*," page 74, ¶ 203.

The above cases are not directly in point, but are cited to show that the practice has been to overlook irregularities in conducting elections, and departures from the Statutes directing the conduct of such elections, when the will of the persons voting was evident. In the case of *John Closston, of Virginia*, Case 11, *Clarke & Hall's Reports*, the Committee found that illegal votes had been given for both contesting parties, and they deducted those votes and awarded the seat to the person having the highest number of voets remaining after such deduction. Where an election has been conducted with fairness on the part of the inspectors, though they may have erred in making up their returns, yet their evidence is competent and ought to be received to correct any mistake that may have occurred in returning the votes given at such election. Case 49, *Clarke & Hall*.

The officers of the different election districts must certify the result to the canvassers, and they to the Governor. They are all ministerial officers, and error committed by either of them, either through mistake or design, is to be corrected by the House. *Clarke & Hall*, Case 54.

These and many other cases in the same volume, which it is not thought necessary to cite, all tend to the conclusion that irregularities on the part of persons conducting the election are not to weigh against the popular will, when that can be ascertained.

In the *People vs. Cook*, *Selden's Reports*, Vol. 4, the Court held that laws regulating elections, are directory and not jurisdictional in their character. In the same case, page 86, the Court says "there are various duties enjoined by law upon the inspectors, the great objects of which are,

1st, To afford to every citizen having a constitutional right to vote, an opportunity to exercise that right.

2d, To prevent every one deprived of that right from voting, and,

3d, To conduct the election in such a manner in point of *form* that the true number of legal votes can be ascertained with certainty.

If all these objects be accomplished, to reject the whole votes because the inspectors failed to comply with every prescribed regulation, would be, as was well remarked by one of the Judges in the Court below, to place a higher value on the Statute regulation than on the right itself. It would be a sacrifice of substance to form."

In *Cushing's Law and Practice of Legislative Assemblies*, Sec. 198, Part 1st, the doctrine is laid down as follows: "An election may be controverted on the ground of the illegal reception or illegal rejection of votes by the returning officers, and in such a case if it is proved that votes sufficient to change the majority have been illegally received or illegally rejected, the election will be set aside, and the candidate having the majority will be admitted, but neither the reception of illegal, nor the rejection of legal votes, will have this effect, unless the majority is thereby affected."

Admitting this, then, to be the law, the returns first made, but not returned, to the Register, might have been allowed to stand good as regards these parties, since the excess of nine illegal votes would not change the result, and certainly when the whole number of illegal votes are taken from the petitioner, Mr. Kingsley, and he still has a majority, his right to a seat in this House cannot be questioned.

In conclusion, and as a result arrived at upon a careful consideration of the facts in the case and the authorities above cited, your Committee submit the following propositions :

1st. That failure to comply with directory Statutes where there has been a substantial election, does not render the vote given at such election, void.

2d. That the laws of Minnesota regulaties elections, are directory, and *Therefore*, That the irregulation of the board of Judges in Precinct No. 5, do not make void the vote in that Precinct.

The intent of the voters cannot be doubted. No fraud is charged, nor is there reasonable ground of suspicion that fraud was intended. The excess of nine votes above the number of persons voting, all being taken from Mr. Kingsley, leaving to Mr. Dunham the full number of votes received by him, does not affect the result but still leaves Mr. Kingsley with a majority of six votes.

Therefore, Your Committee are of the opinion that Geo. B. Kingsley, the contestant in this case, is entitled to a seat in this House now held by the respondent, W. N. Dunham, and they offer the following resolution :

Resolved, That Geo. B. Kingsley is entitled to a seat in this House, and that W. N. Dunham is not entitled to a seat in this House.

GEO. BRADLEY,
EBENEZER BRAY,
JAMES B. WAKEFIELD.

Committee.

PETITION OF GEORGE B. KINGSLEY.

To the Honorable the Speaker and Members of the House of Representatives of the State of Minnesota:

Your petitioner, George B. Kingsley, of the County of Faribault, respectfully represents, that at the election held on the second Tuesday of

October last, he was a candidate for member of the House of Representatives from the 14th Senatorial and Representative District. That the Board of Canvassers for said District, in canvassing the votes polled at said election, decided and declared that your petitioner had received four hundred and thirteen votes only, for member of the House of Representatives, and that W. N. Dunham had received four hundred and nineteen votes for the same office, and thereupon delivered to said Dunham a certificate of his election to said office. But your petitioner further represents that, in making said Canvass, said board rejected entirely the votes cast in precinct No. 15, in Freeborn County, at which said precinct there were thirty-seven votes cast for your petitioner for the office aforesaid, while but votes were given for the said Dunham, for said office, and that the rejection of the votes cast at said precinct by said board was without authority of law. Your petitioner, therefore, represents that he is a duly elected member of your Honorable body. That he is entitled to hold the seat now occupied by the said W. N. Dunham and contests the said Dunham's right thereto, and prays that he may be admitted and sworn as a Representative from the District aforesaid.

GEO. B. KINGSLEY,

SAINT PAUL, December 3, 1857.

AFFIDAVIT OF W. N. DUNHAM FOR WITNESSES.

In the matter of the contested seat of the Hon. W. N. Dunham the sitting member in the House of Representatives, from the 14th Senatorial and Representative District of Minnesota, *contested* by George B. Kingsley, Esq.

TERRITORY OF MINNESOTA, }
County of Ramsey. } ss.

W. N. Dunham of lawful age, and a resident of the county of Faribault, in said Territory, and a member of the House of Representatives in the Legislative Assembly of the Territory of Minnesota, now in session, came personally before me, and being duly sworn says, that his seat and right to a seat in the House of Representatives in the Legislature of said Territory, now assembled and in session, is disputed and contested by one George B. Kingsley, Esq., who is also a resident of the said county of Faribault, in said Territory.

That this deponent states and verily believes to be true, that he received a full and complete majority of all the legal votes cast or polled in the whole of the 14th Senatorial and Representative District, within the Territory of Minnesota, at the late general Election held in said District on or about the 13th day of October, A. D. 1857, as one of the Representatives from said District, and that he was duly legally, and properly elected by the votes of a majority of all the legally qualified Electors of said District, as a Representative from said District and member of the present Legislative Assembly of Minnesota, and deponent further says, that in the present contest of his right to a seat in the Legislative Assembly, and of his election aforesaid contested by the said George B. Kingsley, Esq., as aforesaid, Patrick Fitzsimmons, James Cotrell, and Lewis Probestein, are all material witnesses for and on his behalf, and that their evidence is all material in establishing his right and election to a seat in the said House of Representatives which he now holds.

And deponent further says, that he expects to prove, and verily believes that he can prove and establish by the witnesses aforesaid, the fact that, he received a *majority* of all the votes actually cast, given or polled in Precinct No. 5, in the county of Freeborn, and that the same were so first and originally returned in his favor to the proper and legal Canvassers of such votes, and that before the same were canvassed or reported, the same were withdrawn, and that immediately thereafter another return of the said vote and result thereof was made to the said County Canvassers which was in fact fraudulent and untrue, and in and by which the votes given for this deponent as representative aforesaid were not returned and did not appear.

And deponent expects to prove by the witnesses aforesaid and believes he can prove by them and each of them all the facts above stated, and also that he actually received and had a majority of six votes of all the votes actually given, cast or polled in his District aforesaid at the election aforesaid.

And deponent further says, that Augustus Armstrong and William Morin who are residents of the District aforesaid, are also both material witnesses, as he is informed and believed to be true, in the contest aforesaid, and by whom deponent verily believes he can prove and establish the same fact and matters herein before stated, and establish his right to a seat in said House, and to the office of Representative from the District aforesaid, clearly and fully, and deponent further says that all the persons (witnesses,) aforesaid, reside in the said 14th Senatorial and Representative District in this Territory, and that he does not know of any other person or persons by whom he can prove or establish the facts herebefore stated.

And therefore, deponent respectfully asks that a subpoena or other proper process may be issued to procure and compel the personal attendance of the persons aforesaid as witnesses for this deponent, to be examined in the matter and contest aforesaid.

And deponent further asks and prays that the subpoena or subpoenas or other process so issued to compel the attendance of the said Patrick Fitzsimons, James Cotrell and Louis Probestein may contain a clause and mandate therein to be inserted, (of duces tecum,) commanding and requiring them and each and every of them, to bring with them and produce the original Poll Books and List of the voters, and also the votes given, received and polled at the late general election aforesaid, in Precinct No. (5,) in the county of Freeborn aforesaid, that the same may be inspected and truly and properly Canvassed, as the same were actually given and made.

And further deponent say not.

W. N. DUNHAM.

Subscribed and Sworn to before me, the 12th day of December, 1857.

PHILIP DEKOCHELNOM, Notary Public, Min. Ter.

[A.] CERTIFICATE OF REGISTER OF DEEDS OF FARIBAULT COUNTY.

TERRITORY OF MINNESOTA, }
 County of Faribault. }

OFFICE OF REGISTER OF DEEDS.

I hereby certify that at any election held in the Fourteenth Represent-

ative District, on the 13th day of October, A. D. 1857. George B. Kingsley had four hundred and thirteen votes for Representative, and W. N. Dunham had four hundred and nineteen (419) votes for representative, as shown by the returns of said election, now on file in this office.

[L. S.] Given under my hand and the Seal of this office, on the 25th day of November, A. D. 1857.

J. A. KEISTER, Register of Deeds.

[B.] CERTIFICATE OF REGISTER OF DEEDS OF FREEBORN COUNTY.

TERRITORY OF MINNESOTA, }
County of Freeborn. } ss.

I hereby certify that in the returns to this office of an election held in Precinct No. 5, of said County, on the 13th of October, A. D. 1857, Wm. N. Dunham has received nine (9) votes for Representative from the 14th District, and that George B. Kingsley had for the same office, thirty-sevn (37) votes. And I further certify, that in the official canvass of the returns of said County, all the votes cast in the aforesaid Precinct for the above named candidates, as well as for all officers elected under the new Constitution, were not counted or reckoned by the board of canvassers in determining what candidate had the highest number of votes, but that all votes from said Precinct for said officers were registered by the board.

[L. S.] Witness my hand and seal this 20th day of November, A. D. 1857.

WM. MORIN, Register of Deeds.
Freeborn County, M. T.

[C.] POLLBOOK AND RETURNS FROM PRECINCT No. 5, FREEBORN COUNTY, FROM OFFICE OF REGISTER OF DEEDS OF SAID COUNTY.

TERRITORY OF MINNESOTA, }
COUNTY OF FREEBORN. } ss.

We, James M. Cottrell, Patrick Fitzsimmons and Lewis Proebsting being duly appointed Judges of Election in Precinct Number five, Freeborn County, do solemnly swear that we will discharge the duties of Judges of election according to law and the best of our abilities, that we will studiously endeavour to prevent fraud, deceit and abuse in conducting the same.

LEWIS PROEBSTING,
JAMES M. COTTRELL,

Sworn and subscribed before me }
this 13th day of October, 1857. }
PATRICK FITZSIMMONS, }
Justice of the Peace. }

PATRICK FITZSIMMONS,

Sworn and subscribed before me this 13th day of October, 1857.
JAMES M. COTTRELL, Judge of Election.

And we James Carroll and William Leneve being duly appointed Clerks of Election do solemnly swear that we will perform the duties of Clerks of Election according to law and the best of our abilities, that we will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

JAMES CARROLL,
WILLIAM LENEVE.

Sown and subscribed before me this 13th day of October, 1857,

PATRICK FITZSIMMONS, Justice of the Peace.

Poll Book for an Election held at Precinct No. (5,) five in Freeborn County, Minnesota Territory, on Tuesday the thirteenth day of October, A. D. 1857.

- | | |
|----------------------|-------------------------|
| 1 Frederick McCall, | 24 Henry Tunnell, |
| 2 James Luff, | 25 Henry Ihnke, |
| 3 Charles T. White, | 26 Chas. Ihnke, |
| 4 Patrick Newland, | 27 John Tunnell, |
| 5 James Duffey, | 28 Chas. Tunnell, |
| 6 Richard White, | 29 Frederick Tunnell, |
| 7 J. C. Baer, | 30 William Wolter, |
| 8 Joseph White, | 31 Henry Smith, |
| 9 Alonzo White, | 32 Louis Proebsting, |
| 10 Thos. Roberts, | 33 William Banning, |
| 11 E. D. Hopkins, | 34 John V. Woohether, |
| 12 William White, | 35 Michael Donnahue, |
| 13 Avery N. Smith, | 36 William P. Spooner, |
| 14 James Carroll, | 37 Isaac Kandall, |
| 15 Henry G. Emmons, | 38 Jacob Stewart, |
| 16 Erekk Erekkson, | 39 Harry Brown, |
| 17 Toston Erekkson, | 40 Charles Fitzsimmons, |
| 18 Nerve Asleson, | 41 Patrick Fitzsimmons, |
| 19 Jas. M. Cottrell, | 42 Geoge Hall, |
| 20 Samuel Sparks, | 43 John F. Huffman, |
| 21 John Lutes, | 44 D. S. Stockdale, |
| 22 John Bamring, | 45 Calvin Partlow, |
| 23 John Sanford, | 46 William Leneve, |

JAMES CARROLL, }
WM. LENEVE. } Clerks of Election.

At an election held at the house of Patrick Fitzsimmons, in Precinct No. 5, in the County of Freeborn, Minnesota Territory, on Tuesday, October 13th, A.D. 1857, the following named persons received the number of votes opposite their respective names, for the following described offices, to wit:

For Governor, Alexander Ramsey received twenty-two votes.

Henry H. Sibley received twenty-three votes.

For Lieutenant Governor, William H. Holcombe received twenty-three votes.

John C. Ide received twenty-two votes.

For Secretary of State, Francis Baasen received twenty-three votes.

Lucas K. Stannard received twenty-two votes.

For State Auditor, William F. Dunbar received twenty-three votes.

A. P. Lane received twenty-two votes.

For State Treasurer, George W. Armstrong received twenty-three votes.

Frank Mantor received twenty-two votes.

For Attorney General, Charles H. Berry received twenty-three votes.

George A. Nourse received twenty-two votes.

For Chief Justice of the Supreme Court, Lafayette Emmett received twenty-three votes.

Horace R. Bigelow received twenty-two votes.

For Associate Judges of the Supreme Court, Isaac Atwater received twenty-three votes.

Charles E. Flandrau received twenty-three votes.

John M. Berry received twenty-two votes.

H. A. Billings received twenty-two votes.

For Clerk of the Supreme Court, Jacob J. Noah received twenty-three votes.

Alexander B. Russell received twenty-two votes.

For Representatives in Congress, George L. Becker received twenty-three votes.

William W. Phelps received twenty-three votes.

James M. Cavanaugh received twenty-three votes.

Morton S. Wilkinson received twenty-two votes.

Henry A. Swift received twenty-two votes.

Cyrus Aldrich received twenty-two votes.

For Judge of the Fifth Judicial District, James C. Lowell received twenty-three votes.

N. M. Donelson received twenty-two votes.

For Prosecuting Attorney of the Fifth Judicial District, Frank Warner received twenty-three votes.

Oscar Perkins received twenty-two votes.

For State Senator, Edwin Stacey received thirty-seven votes.

George Watson received nine votes.

For Representatives, Alfred P. Swineford received thirty-four votes.

Andrew C. Dunn received thirty-seven votes.

George B. Kingsley received thirty-seven votes.

Amander H. Bartlett received twelve votes.

W. N. Dunham received nine votes.

James B. Wakefield received nine votes.

For Clerk of the District Court, Augustus Armstrong received thirty-seven votes.

E. P. Skinner received nine votes.

For Judge of Probate, E. P. Skinner received thirty-seven votes.

Asa W. White received nineteen votes.

Delegate to Congress, William W. Kingsbury received twenty-seven votes.

Charles McClure received fifteen votes.

For the Constitution, forty-three votes.

For County Commissioners, Peter Clawson received thirty-seven votes.

S. N. Frisbee received forty-one votes.

Patrick Fitzsimmons received thirty-eight votes.

Joseph Rickard received nine votes.

Rufus K. Crum received five votes.

Charles S. Tarbell received eight votes.

For Register of Deeds, J. C. Baer received thirty-five votes.

E. P. Skinner received five votes.

William Morin received six votes.

For Sheriff, John M. Heath received twenty-five votes.

John T. Asher received two votes.

James M. Cottrell received nineteen votes.

For Treasurer of the County, William Andrews received thirty-eight votes.

Henry King received eight votes.

For County Surveyor, H. D. Brown received thirty-eight votes.

C. C. Colby received eight votes.

For Assessors, E. S. Smith received thirty-seven votes.

Clark Andrews received thirty-eight votes.

R. K. Crum received thirty-nine votes.

G. W. Chesley received eight votes.

George W. Derman received eight votes.

Walter Stott received eight votes.

For Coroner, Frederick McCall received thirty-eight votes.

A. M. Burnham received six votes.

For County Seat, Albert Lea received forty-two votes.

Bancroft received four votes.

PRECINCT OFFICERS.

For Justices of the Peace, Patrick Fitzsimmons received twenty-eight votes.

Frederick McCall received nineteen votes.

Wm. P. Spooner received nine votes.

For Constables, Charles T. White received twenty-seven votes.

Alonzo R. White received twenty-seven votes.

For Road Supervisor, Wm. P. Spooner received fourteen votes.

For Judges of Election, William White received twenty-seven votes.

James M. Cottrell, received twenty-seven votes.

Louis Proebsting received twenty-two votes.

Patrick Fitzsimmons received three votes.

Attested by us, this 13th day of October, A.D. 1857.

LOUIS PROEBSTING, }
 PATRICK FITZSIMMONS, } Judges of Election.

Attest :

JAMES CARROLL, }
 WM. LENEVE, } Clerks of Election.

TERRITORY OF MINNESOTA, }
 County of Freeborn. } ss.

[L. s.] I hereby certify that this is the identical Poll Book returned to me from Precinct No. 5, in said County.

WM. MORIN,
 Clerk of Board of County Commissioners and Register of Deeds.

[D.] TESTIMONY OF PATRICK FITZSIMMONS.

Testimony of Mr. Fitzsimmons before the Select Committee appointed to investigate the right of George B. Kingsley to a seat in the House of Representatives.

Patrick Fitzsimmons, being first duly sworn, deposed as follows:

I am a resident of Precinct No. 5, in Freeborn County. I was one of the Judges of Election in that Precinct at the last Fall election. I and my associates delivered to Mr. Kingsley a tally list kept at that election. The tally list before the Committee is the one so delivered.

On the morning of the election, only two of the Judges of Election were present, and James Cottrell was elected to fill the vacancy. I administered the oath of office to the other two Judges, and Mr. Cottrell administered it to me. I was a magistrate at that time. When the votes were counted there appeared an excess of nine (9) votes upon the District ticket over the number of voters whose names appeared upon the poll lists.

We did not purge the ballot-box by destroying the excess of votes. I was of the opinion that they should be destroyed, but Mr. Cottrell (one of the other Judges) said we had no right to meddle with the votes, but must make our returns according to the votes found in the box. We had no statute and no instructions to guide us, and the return was accordingly made and signed and sealed according to the votes in the box. I said that I should not deliver the returns until I had taken counsel on the subject. I accordingly asked advice of Mr. Armstrong at Albert Lea, and, after taking his opinion, notified Mr. Cottrell and the other Judge that we must amend our returns.

I have never seen Mr. Cottrell since he ran away, and I don't know where he is.

The other Judge (Mr. Proebstein) and both clerks were present at my house and aided in making up the amended returns. Mr. Proebstein suggested that eight of the votes cast with W. N. Dunham's name on them were cast by mistake, and that the same parties voted the District ticket with Geo. B. Kingsley's name upon it. He suggested, therefore, that the eight votes having Dunham's name on them be thrown out, and that one having Kingsley's name on it be also thrown out, which was accordingly done, and the returns made accordingly. These new returns I delivered to the Deputy Register of Deeds of Freeborn County within ten days after the election.

I never consulted with Mr. Dunham or Mr. Kingsley on the subject.

Mr. Stacey examined the votes before the amended returns were made.

We amended the returns without re-counting the votes—using the poll-book and first-made returns.

There was no mark by which we could tell a State from a District ticket. We could only judge from the difference in size. Our ballot-box had three compartments—one labelled "State", one "District", and one "County" ticket.

[E.]—FIRST MADE RETURNS FROM PRECINCT No. 5, FREEBORN COUNTY.

At an election held at the House of Patrick Fitzsimmons, in precinct numbered Five, in the County of Freeborn, Minnesota Territory, on Tuesday October 13th, A. D. 1857, the following named persons received the

number of votes opposite their respective names for the following described offices, to wit :

For Governor, Alexander Ramsey had Twenty-two votes.

Henry H. Sibley had Twenty-three votes.

For Lieutenant Governor, William Holcomb had twenty-three votes.

John C. Ide had twenty-two votes.

For Secretary of State, Francis Baasen received twenty-three votes.

Lucas K. Standard received twenty-two votes.

For State Auditor, W. F. Dunbar received twenty-three votes.

A. P. Lane received twenty-two votes.

For State Treasurer, George W. Armstrong received twenty-three votes.

Frank Mantor received twenty-two votes.

Attorney General, Charles H. Berry received twenty-three votes.

George A. Nourse received twenty-two votes.

For Chief Justice of the Supreme Court, Lafayette Emmett received twenty-three votes.

Horace B. Bigelow received twenty-two votes.

For Associate Justices of the Supreme Court, Isaac Atwater received twenty-three votes.

Charles E. Flandrau received twenty-three votes.

John M. Berry received twenty-two votes.

H. A. Billings received twenty-two votes.

For Clerk of the Supreme Court, Jacob J. Noah received twenty-three votes.

Alexander B. Russell received twenty-two votes.

For Representatives to Congress, George L. Becker received twenty-three votes.

William W. Phelps received twenty-three votes.

James M. Cavanaugh received twenty-three votes.

Morton S. Wilkinson received twenty-two votes.

Henry A. Swift received twenty-two votes.

Cyrus Aldrich received twenty-two votes.

For Judges of the Fifth Judicial District, James C. Lowell received twenty-three votes.

N. M. Donelson received twenty-two votes.

For Prosecuting Attorney for the Fifth Judicial District, Frank Mantor received seventeen votes.

Oscar F. Perkins received twenty-two votes.

Frank Warner received seven votes.

For the Constitution, forty-three votes.

For Senator, Edwin C. Stacey received thirty-eight votes.

George Watson received seventeen votes.

For Representatives, Alf. P. Swineford received thirty-five votes.

Andrew C. Dunn received thirty-eight votes.

George B. Kingsley received thirty-eight votes.

Amandor H. Bartlet received twenty-votes.

James B. Wakefield received seventeen votes.

W. N. Dunham received seventeen votes.

For Clerk of the District Court, Augustus Armstrong received thirty-eight votes.

E. P. Skinner received nine votes.
 For Probate of Judge, E. P. Skinner received fifty-seven votes.
 For Delegate to Congress, Charles McClure received fifteen votes.
 William W. Kingsbury received twenty-seven votes.
 For County Commissioners, Peter Clausen received thirty-seven votes.
 S. N. Frisbie received forty-one votes.
 Patrick Fitzsimmons received thirty-eight votes.
 Joseph Rickard received nine votes
 Rufus K. Crum, received five votes.
 Charles S. Tarbill received eight votes.
 For Registers of Deeds, J. C. Barr received thirty-six votes.
 E. P. Skinner received five votes.
 Wm. Morin received six votes.
 For Sheriff, John W. Heath received twenty-five votes.
 John T. Asher received two votes.
 James M. Cotrell received nineteen votes.
 For County Treasurer, William Andrews received thirty-eight votes.
 Henry King received eight votes.
 For County Surveyors, H. D. Brown received thirty-eight votes.
 C. C. Colby received eight votes.
 For Probate Judge, Alex. W. White received nineteen votes.
 For Assessors, E. S. Smith, received thirty-seven votes.
 Clark Andrews received thirty eight votes.
 R. K. Crum, received thirty-nine votes.
 G. W. Charley received eight votes.
 G. W. Dearman received eight votes.
 Walter Scott received eight votes.
 For Coroner, A. M. Burham received six votes.
 Frederick McCall received thirty-eight votes.
 For County Seat, Albert Lea received forty-two votes.
 Bancroft received four votes.

PRECINCT OFFICERS.

For Justices, Patrick Fitzsimmons received twenty-eight votes.
 Frederick McCall received nineteen votes.
 W. P. Spooner received nine votes.
 For Constables, Charles T. White received twenty-seven votes.
 Alonzo W. White received twenty-seven votes.
 For Road Supervisors, W. P. Spooner received fourteen votes.
 For Judges of Election, William White received twenty-seven votes.
 James M. Cotrell received twenty-seven votes.
 Lewis Præbusting received twenty-two votes.
 Patrick Fitzsimmons received three votes.
 Attested by us this, the thirteenth day of October, one thousand eight hundred and fifty-seven.

JAMES COTRELL,
 PATRICK FITZSIMMONS,
 LOUIS PRÆBSTING,
 Judges of Election.

JAMES CARROLL,
 WM. LENEVE,
 Clerks of Election.

AFFIDAVIT OF AMANDER H. BARTLETT.

TERRITORY OF MINNESOTA, }
 COUNTY OF FREEBORN, } ss.

Amander H. Bartlett being duly sworn, deposeth and saith that on the examination of the votes in Precinct No. Five in said County, he found twenty-two Republican tickets that had been polled at the election in said Precinct on the 13th day of October inst. And deponent further says that he was informed by one of the Judges that the poll books for said Precinct were made up, sealed and returned to Albert Lea by said Judge of Election the day after election, but were not delivered to the Register of Deeds. And deponent further states that Patrick Fitzsimons, the Judge of Election aforesaid, informed him that the poll books delivered to the Register of Deeds were not the original poll books made up, sealed and delivered to Albert Lea by the Judge aforesaid, but that new and amended returns were made up and delivered to the Register of Deeds.

AMANDER H. BARTLETT.

Sworn and subscribed before me this 24th day of October, A. D. 1857.

WM. ANDREWS,
 Justice of the Peace.

TERRITORY OF MINNESOTA, }
 COUNTY OF FREEBORN, } ss.

I hereby certify that William Andrews, before whom the above affidavit was sworn, was, at the time said affidavit was sworn, and now is, an acting Justice of the Peace in and for this County, duly elected and qualified, and that full faith and credit are and should be given to all his official acts.

I further certify that his signature to the original of this is genuine.

[L. S.] Given under my hand and Seal this 22d day of December, A. D. 1857.

WM. MORIN,
 Register of Deeds Freeborn County, M. T.

I further certify this is a true copy of the original now on file in this office.

WM. MORIN,
 Register of Deeds Freeborn County, M. T.

AFFIDAVIT OF JAMES M. COTTRELL.

TERRITORY OF MINNESOTA, }
 County of Freeborn. } ss.

James Cottrell, being duly sworn says that at the election held in Precinct No. Five, on the 13th day of October, A. D. 1857, he was one of the Judges of Election in said Precinct No. 5 in said County; that forty-six (46) votes were polled in said precinct for the various offices to be filled at said election; that Edwin C. Stacey received no votes for State Senator at said precinct that were deposited in the poll-box prepared by the Judges for the State ticket; and that no votes were deposited in the poll-box for

the State ticket for Alfred P. Swineford, George B. Kingsley, or James C. Dunn.

JAMES COTTREL.

Sworn and subscribed before me, this 14th day of October, A. D. 1857.
J. CLARK, Justice of the Peace.

TERRITORY OF MINNESOTA, }
County of Freeborn. } ss.

I hereby certify that J. Clark, before whom the above affidavit was sworn was at the time said affidavit was sworn, and now is, an acting Justice of the Peace in and for this County; and that full faith and credit are and should be given to all his official acts. I further certify that his signature as Justice of the Peace to the original affidavit, is genuine.

[L. S.] Given under my hand and seal, this 22d day of December,
A. D. 1857.

WM. MORIN,

Register of Deeds, Freeborn Co. M. T.

I further certify this is a true copy of the original now on file in this office.

WM. MORIN,

Register of Deeds, Freeborn Co. M. T.

CERTIFICATE OF THE SECRETARY OF STATE.

SECRETARY'S OFFICE,
Territory of Minnesota. }

I do hereby certify, that there is now on file in this office, an abstract of the canvass of votes for the fourteenth Senatorial District, composed of the Counties of Faribault and Freeborn. That the Register's of Deeds of both of said Counties, certify under their seal, that the number of votes cast for William N. Dunham, a candidate in said District for the House of Representatives, was four hundred and nineteen, (419.) That the number of votes cast for George B. Kingsley, a candidate in said District for the House of Representatives, was four hundred and thirteen, (413.)

I further certify, that the Register of Deeds for the County of Freeborn, has placed a letter from him on file in this office, wherein he states that he registered the poll list and votes from Precinct No. 5, in said County.

And I do further certify, that the poll book from said Precinct No. 5, is on file in this office, wherein it appears that the aforesaid Wm. N. Dunham, received nine votes for the office aforesaid, and that the said Geo. B. Kingsley received thirty-seven votes for the office aforesaid.

CHARLES L. CHASE.

Secretary Minnesota Territory.

AFFIDAVIT OF LOUIS PROEBSTING.

TERRITORY OF MINNESOTA, }
COUNTY OF FREEBORN, } ss.

Louis Proebsting, being by me duly sworn, deposes and says that he is one of the Judges of Election of Precinct No. 5, of said County; that he is intimately acquainted with Frantz Smith, Frederick Turnell, Henry

Turnell, John Turnell, Charles Turnell, Charles Whollir, Charles Ghenke, and ——— Ghenke, of said County; that he, the deponent, gave the above named persons, (at the election of 13th Oct., 1857,) the "people's district ticket," a sample of which is hereby attached; that the deponent commended the persons whose names appear on said ticket, as "good and honest" men; that the deponent voted said ticket, and requested that they, the above named persons, should do the same, which they accordingly did, upon the recommendation of the deponent; deponent says further that the name of Geo. B. Kingsley was upon the above described ticket. And the deponent says further that the above named Frederick Turnell, Charles Turnell, Henry Turnell, Frantz Smith, John Turnell, Charles Wholter, Charles Ghenke, and ——— Ghenke, voted (to his knowledge, the "Republican State Ticket," under the impression that it was a "State ticket" at large, but upon which was the name of Wm. N. Dunham for Representative from the 14th District; that it was through this error that Mr. Dunham has on the tally list seventeen votes; that for the reason of this error, eight votes were not counted for Mr. Dunham in the return of the Judges, it being evident to said Judges that the eight votes were *intended* for Mr. Kingsley, for whom they were cast upon the commendation of the deponent, and not for Mr. Dunham, for whom they were also cast, though ignorantly and through mistake.

And deponent further says that there was one "Democratic State Ticket" voted at said election, upon which was the name of Geo. B. Kingsley for Representative from the 14th District. It was also evident to the Judges that this ballot was cast through the same error, and was rejected on that account, and for this reason Mr. Kingsley is returned with thirty-seven votes instead of thirty-eight, which the tally lists present.

LOUIS PROEBSTING.

Sworn to and subscribed before me this 18th day of November, A. D. 1857.

AUGUSTUS ARMSTRONG,
Notary Public, M. T.

TERRITORY OF MINNESOTA, }
COUNTY OF FREEBORN, } ss.

Patrick Fitzsimmons being duly sworn, says that the facts and reasons respecting the return of Mr. Kingsley's and Mr. Dunham's vote are as stated in the within affidavit, &c.

PATRICK FITZIMMONS.

Subscribed and sworn to before me this 18th day of Nov., A. D. 1857.

AUGUSTUS ARMSTRONG,
Notary Public, M. T.

TALLY LIST AND ACCOMPANYING AFFIDAVIT.

TERRITORY OF MINNESOTA, }
COUNTY OF FREEBORN, } ss.

Patrick Fitzsimons and Louis Proebsting, being by me duly sworn, depose and say that they are two of the Judges of Election of Precinct No. 5, of said County duly appointed and qualified; that they served as

such at the October election of 1857, and the within instrument is one of the original tally lists kept at said election of October 13th, 1857.

PATRICK FITZIMMONS.

LOUIS PROEBSTING.

Sworn to and subscribed before me this 18th day of Nov., A. D., 1857.

AUGUSTUS ARMSTRONG,

Notary Public, M. T.

I hereby certify that the within is one of the original tally lists kept at Precinct No. 5 of Freeborn County, M. T., at an election held at said Precinct on the 13th day of October, A. D. 1857.

WILLIAM LEVENE, Clerk of Election.

For Senator, Edwin Stacey received thirty-eight votes.

For Representative, Alfred P. Swineford received thirty-five votes.

Andrew C. Dunn received thirty-eight votes.

George B. Kingsley received thirty-eight votes.

A. H. Bartlett received three votes.

For Clerk of District Court, Augustus Armstrong received thirty-eight votes.

E. P. Skinner received nine votes.

For Judge of Probate, E. P. Skinner received twenty-seven votes.

Asa W. White received twelve votes.

For Delegate to Congress, Wm. W. Kingsbury received twenty-seven votes.

Charles McClure received fifteen votes.

For Governor, Alexander Ramsey received twenty-two votes.

Henry H. Sibley received twenty-three votes.

For Lieutenant Governor, John C. Ide received twenty-two votes.

William Holcombe received twenty-three votes.

For Secretary of State, Lucas K. Stannard received twenty-two votes.

Francis Baasen received twenty-three votes.

For State Auditor, A. P. Lane received twenty-two votes.

William F. Dunbar received twenty-three votes.

For State Treasurer, Frank Mantor received twenty-two votes.

George W. Armstrong received twenty-two votes.

For Members of Congress, Morton S. Wilkinson received twenty-two votes.

Henry A. Swift received twenty-two votes.

Cyrus Aldrich received twenty-two votes.

For Chief Justices of the Supreme Court, Horace R. Bigelow received twenty-two votes.

Lafayette Emmett received twenty-three votes.

For Associate Justices of the Supreme Court, John M. Berry received twenty-two votes.

H. A. Billings received twenty-two votes.

Isaac Atwater received twenty-three votes.

Charles E. Flandrau received twenty-three votes.

For Attorney General, George A. Nourse received twenty-two votes.

Charles H. Berry received twenty-three votes.

For Clerk of Supreme Court, Alexander B. Russell received twenty-two votes.

Jacob J. Noah, received twenty-three votes.

For Judge of the District Court of the Fifth Judicial District, N. M. Donalson received twenty-two votes.

James C. Lowell received twenty-three votes.

For Prosecuting Attorney of the Fifth District, Oscar F. Perkins received twenty-two votes.

Frank Warner received seven votes.

For State Senator, Fourteenth District, George Watson received seventeen votes.

For Representatives, W. N. Dunham, received seventeen votes.

Amander H. Bartlett received seventeen votes.

James B. Wakefield received seventeen votes.

George L. Becker received twenty-three votes.

William W. Phelps received twenty-three votes.

James M. Cavanaugh received twenty-three votes.

For the Constitution, forty-three votes.

Frank Mantor received seventeen votes.

For County Commissioners, S. N. Frisbie, received forty-one votes.

Peter Clauson received thirty-seven votes.

Patrick Fitzsimmons received thirty-eight votes.

Joseph Rickard received nine votes.

A. K. Crum received five votes.

For Sheriff, John W. Heath received twenty-five votes.

J. M. Cottrell received nineteen votes.

John T. Asher received two votes.

For Treasurer, William Andrews received thirty-eight votes.

Henry King received eight votes.

For Register of Deeds J. C. Baer received thirty-six votes.

E. P. Skinner received five votes.

For Probate Judge, E. P. Skinner received thirty votes.

Wiksa W. White received seven votes.

For County Surveyors, H. D. Brown received thirty-eight votes.

C. C. Kolbe received eight votes.

POLL-BOOK OF PRECINCT NO. 5.

TERRITORY OF MINNESOTA, }
 County of Freeborn. } ss.

We, Patrick Fitzsimmons and Lewis Probesting and James M. Cottrell being duly appointed Judges of Election in Precinct No. 5, Freeborn County, do solemnly swear that we will discharge the duties of Judges of Election according to law and the best of our ability; that we will sedulously endeavor to prevent fraud, deceit and abuse in conducting the same.

LEWIS PROEBSTING,
 JAMES M. COTTRELL.

Sworn and subscribed before me }
 this 13th day of October, 1857. }
 PATRICK FITZSIMMONS, }
 Justice of the Peace. }

PATRICK FITZSIMMONS,

Sworn and subscribed before me this 13th day of October, 1857.

And we, James Carroll and William Leneve, being duly appointed Clerks of Election, do solemnly swear that we will perform the duties of Clerks of Election according to law and the best of our ability; that we will sedulously endeavor to prevent fraud, deceit and abuse in conducting the same.

JAMES CARROLL,
WILLIAM LENEVE,

Sworn to and subscribed before me this 13th day of October, 1857.

PATRICK FITZSIMMONS, Justice of the Peace.

TERRITORY OF MINNESOTA, }
County of Ramsey, ss. }

Names of the voters in Precinct No. 5, on the 13th of October, 1857:—

1 Frederick McCall,	24 Henry Tunell,
2 James Luff,	25 Henry Iahnke,
3 Charles T. White,	26 Charles Iahnke,
4 Patrick Nunan,	27 John Tunell,
5 James Duffy,	28 Charles Tunell,
6 Richard White,	29 Frederick Tunell,
7 J. C. Baer,	30 William Wolter,
8 Joseph W. White,	31 Henry Smith,
9 Alonzo W. White,	32 Louis Proebsting,
10 Thomas Roberts,	33 William Banning,
11 E. D. Hopkins,	34 John V. Wohlthtter,
12 William White,	35 Michael Donehue,
13 Avery N. Smith,	36 William P. Spooner,
14 James Carroll,	37 Isaac Kendall,
15 Henry G. Emmons,	38 Jacob Steward,
16 Ereik Erekson,	39 Harry Brown,
17 Tosbon Erekson,	40 Charles Fitzsimmons,
18 Nerve Asleson,	41 Patrick Fitzsimmons,
19 James M. Cottrell,	42 George Hall,
20 Samuel Sparks,	43 John F. Fuffman,
21 John Lutes,	44 David F. Stockdale,
22 John Bannings,	45 Calvin Partlow,
23 John Sanford,	46 William Leneve.

JAMES CARROLL, } Clerk of Election.
WM. LENEVE. }

At an election held at the house of Patrick Fitzsimmons, in Precinct No. 5 in the County of Freeborn, Minnesota Territory, on Tuesday, October 13th, A. D. 1857, the following named persons received the number of votes opposite to their names for the following described offices, to wit:

For Governor, Alexander Ramsey received twenty-two votes.

Henry H. Sibley received twenty-three votes.

For Lieutenant Governor, Wm. Holcombe received twenty-three votes.

John C. Ide received twenty-two votes.

For Secretary of State, Francis Baasen received twenty-three votes.

Lucas K. Stannard received twenty-two votes.

For State Auditor, Wm. F. Dunbar received twenty-three votes.

A. P. Lane received twenty-two votes.

For State Treasurer, Geo. W. Armstrong received twenty-three votes.

Frank Mantor received twenty-two votes.

For Attorney General, Charles H. Berry received twenty-three votes.

George A. Nourse received twenty-two votes.

For Chief Justice of the Supreme Court, Lafayette Emmett received twenty-three votes.

Horace R. Bigelow received twenty-two votes.

For Associate Justices of the Supreme Court, Isaac Atwater received twenty-three votes.

Charles C. Flandrau received twenty-three votes.

John M. Berry received twenty-two votes.

H. A. Billings received twenty-two votes.

For Clerk of the Supreme Court, Jacob J. Noah received twenty-three votes.

Alexander B. Russell received twenty-two votes.

For Representatives to Congress, George L. Becker received twenty-three votes.

William W. Phelps received twenty-three votes.

James M. Cavanaugh received twenty-three votes.

Morton S. Wilkinson, received twenty-two votes.

Henry A. Swift received twenty-two votes.

Cyrus Aldrich, received twenty-two votes.

For Judges of the Fifth Judicial District, James C. Lowell received twenty-three votes.

N. M. Donelson, received twenty-two votes.

For Prosecuting Attorney of Fifth Judicial District, Frank Warner received twenty-three votes.

Oscar F. Perkins received twenty-two votes.

For State Senator, Edwin C. Stacey, received thirty-seven votes.

George Watson received nine votes.

For Representatives, Alf P. Swineford received thirty-four votes.

Andrew C. Dunn received thirty-seven votes.

George B. Kingsley received thirty-seven votes.

Amander H. Bartlett received twelve votes.

W. N. Dunham received nine votes.

James R. Wakefield received nine votes.

For Clerk of the District Court, Augustus Armstrong received thirty-seven votes.

E. P. Skinner received nine votes.

For Judge of Probate, E. P. Skinner, received twenty-seven votes.

Asa W. White received nineteen votes.

Delegate to Congress, William W. Kingsbury received twenty-seven votes.

Charles McClure received fifteen votes.

For the Constitution received forty-three votes.

For County Commissioners, Peter Clauson received thirty-seven votes.

S. N. Frisbee received forty-one votes.

Patrick Fitzsimmons received thirty-eight votes.

Joseph Rickard received nine votes.

Rufus K. Crum received five votes.

Charles S. Tarbell received eight votes.

Register of Deeds, J. E. Baer received thirty-five votes.

E. R. Skinner received five votes.

William Morin received six votes.

For Sheriff, John W. Heath received twenty-five votes.

John T. Asher received two votes.

James Cottrell received nineteen votes.

For County Treasurer, William Andrews received thirty-eight votes.

Henry King received eight votes.

For County Surveyor, H. D. Brown thirty-eight votes.

C. C. Colbey received eight votes.

For Assessor, E. S. Smith received thirty-seven votes.

Clark Andrews received thirty eight votes.

R. P. Crum received thirty-nine votes.

G. W. Chesley received eight votes.

George W. Derman received eight votes.

Walter Stott received eight votes.

For Coronor, Frederick McCall received thirty-eight votes.

A. M. Burnham received six votes.

For County Seat, Albert Lea received forty-two votes,

Bancroft received four votes.

PRECINCT OFFICERS.

For Justice of the Peace, Patrick Fitzsimmons received twenty-eight votes.

Frederick McCall received nineteen votes.

Wm. Spooner received nine votes.

For Constables, Charles T. White, received twenty-seven votes.

Alonzo R. White received twenty-seven votes.

For Road Supervisor, Wm. T. Spooner received fourteen votes.

For Judges of Election, William White received twenty-seven votes.

James M. Cottrell received twenty-seven votes.

Lewis Proebsting received twenty-two votes.

Patrick Fitzsimmons received three votes.

Attested by us this 15th day of October, A. D. 1857.

LEWIS PROEBSTING,

PATRICK FITZSIMMONS,

Judges of Election.

Attest:

JAMSS CARROLL, }
Wm. LENEVE, } *Clerks of Election.*

TESTIMONY OF MR. WATSON.

Testimony of Mr. Watson in the contested election case between Geo. B. Kingsley and W. N. Dunham.

Mr. Watson, being duly sworn, says :

I was one of the Board of Canvassers of Freeborn County to canvass the votes cast at the last Fall's election. The votes of precinct No. 5, were received and counted for precinct and county officers, and the location of the County Seat of Freeborn county, but were rejected for the State officers. The reason why they were not counted for State officers were that it was in evidenee before the canvassers that the original returns were not made to the Board, and also that one of the Judges of Election was not sworn until after the election. Mr. Cottrell, made an affidavit that Mr. Fitzsimmons took the oath of office after the election and that he, Cottrell, administered it.

Cottrell's affidavit was sworn to before Esquire Clark. Mr. Cottrell was not present. I do not know where he was at that time.

OBJECTIONS RAISED BY COUNSEL MADE AT THE HEARING OF THE CASE OF KINGSLEY V. DUNHAM.

Mr. Dunham, by his Counsel, appears for the purpose of objecting to a hearing at this time and place, for the reason that there has been no sufficient notice of this hearing served upon him.

Also objects to the admission of certificates of Registers of Freeborn and of Faribault Counties, because they are not the best evidence obtainable.

Also, to the certificate of Secretary of the Territory for said reason.

Also, to the tally list and affidavit accompanying, because it does not appear that it was kept by any legally authorized persons.

SUMMONS FOR WITNESSES.

UNITED STATES OF AMERICA, }
Territory of Minnesota. }

To Patrick Fitzsimmons, James Cottrell, and Louis Proebsting,

GREETING:

In the name of the United States, and by the authority and order of the House of Representatives of the Legislative Assembly of the Territory of Minnesota, and of the Legislature of the State of Minnesota, now assembled and in session at the Capital of said Territory;

You, and each and every of you, are commanded and required, that laying aside all and singular your excuses and business, you be and appear before the Honorable George Bradley, James B. Wakefield, and Ebenezer Bray, members of said House of Representatives, and a Committee thereof duly appointed and constituted, immediately and without unnecessary delay after the service of this subpoena and mandate upon you, at the Hall and place of meeting of the said House of Representatives and of the said Committee thereof, at the Capitol in the City of Saint Paul, in the said Territory, then and there to be examined as witnesses, and to give evidence in a certain matter and controversy there pending and to be heard between Warren N. Dunham and George B. Kingsley, Esquires, wherein the right of said Warren N. Dunham to hold and occupy a seat in the said House of Representatives, and his election thereto as a member thereof, from the fourteenth (14th) Senatorial and Representative District of Minnesota aforesaid, and his right to hold such office as Representative from the District aforesaid is disputed and contested by the said George B. Kingsley, and touching and concerning the matter and controversy aforesaid.

And you, and each and every of you, are hereby and by the authority aforesaid, commanded and required to bring with you and exhibit, before the said Committee and persons aforesaid, all the original votes polled, given or received, in Precinct number five, (5) in the County of Freeborn, in said Territory, at the late General Election there held on the 13th day

of October, A. D. 1857, and all Lists, Poll Books, Returns, and all other papers, records, and documents in your or either of your possession, or under your control, in your care, custody, or keeping, or by you accessible, which contain the names of persons who voted at or within said Precinct number five, in the County of Freeborn, aforesaid, at the election aforesaid, or in any wise or manner pertaining or relating to or concerning the said election and the proceedings thereof, had in said Precinct, by whatever name the same may be called.

And that you have the same with you before the Committee aforesaid. Herein fail not, under the pains and penalties that will fall thereon.

Given under my hand, and dated at the Hall of Representatives, at the Capitol, in the City of Saint Paul, in the Territory of Minnesota, on the 14th day of December, in the year 1857.

J. S. WATROUS,

Speaker of the House of Representatives.

HOUSE OF REPRESENTATIVES,
STATE OF MINNESOTA, December 4th, 1857. }

I hereby certify that on the 4th day of December, 1857, Mr. Bradley presented the petition of Geo. B. Kingsley, contesting the seat of W. N. Dunham, of the Fourteenth District, composed of Freeborn and Faribault Counties, and that on motion, the Speaker appointed the following gentlemen as an Investigating Committee, to wit: Messrs. Bradley, Wakefield and Way; and that the House passed the following resolution:

Resolved, That the Special Committee appointed to investigate and report on the claims of Geo. B. Kingsley to the seat now held by Mr. Dunham, have power to send for papers and compel the attendance of witnesses.

A. T. CHAMBLIN,

Chief Clerk of the House of Representatives, State of Min.

SUMMONS FOR WITNESSES.

UNITED STATES OF AMERICA, }
Territory of Minnesota. }

To William Morin, Augustus Armstrong, James Carroll, William Leneve, and Alfred P. Swineford, greeting.

In the name of the United States, and by the authority and order of the House of Representatives of the Legislative Assembly of the Territory of Minnesota, and of the Legislature of the State of Minnesota, now assembled and in session at the Capitol in the city of St. Paul Minnesota aforesaid.

You, and each and every of you, are hereby commanded and required, that laying aside all and singular your business and excuses, you be and appear before the Honorable George Bradley, James B. Wakefield, and Ebenezer Bray, members of the said House of Representatives, and a Committee thereof duly appointed and constituted, immediately

and without delay, after the service of this subpoena and mandate upon you, at the Hall and place of meeting of the said House of Representatives, and of the said Committee thereof, at the Capitol in the city of St. Paul, in the said Territory of Minnesota, then and there to be examined as witnesses and to give evidence in a certain matter and controversy there pending, and to be heard between Warren N. Dunham and George B. Kingsley, Esquires, wherein the right to the said William N. Dunham to hold and occupy a seat in the said House of Representatives, and his election thereto as a member thereof, from the fourteenth (14) Senatorial and Representative District of Minnesota aforesaid, and his right to hold such office as Representative from said District is disputed and contested by the said George B. Kingsley, and concerning and touching the matter and controversy aforesaid.

And you, and each and every one of you, are hereby and by the authority aforesaid, commanded and required to bring with you and exhibit before and to the said Committee and persons aforesaid, all the original votes polled, given or received in precinct number five (5,) or by whatever name or number the same is called,) in the County of Freeborn, in said Territory, at the late general election there held on or about the 13th day of October, A. D. 1857, and all lists, poll books, returns and all other papers, records and documents in the possession of you, or either of you, or in your keeping or custody, or under your control or to you accessible, which contains the names or a statement or a list of persons who voted within said Precinct No. five (5,) in the county of Freeborn aforesaid, at the election aforesaid, or which in anywise or manner pertain, relate to or concern the said votes, election or proceedings and returns thereof in the said Precinct, and by whatever name the same may be called.

Hereof fail not, under the pains and penalties that will fall thereon.

Given under my hand and dated at the Hall of Representatives at the Capitol in the city of St. Paul, in the Territory of Minnesota, on this 14th day of December, in the year 1857.

J. S. WATROUS,

Speaker of the House of Rep.

HALL OF THE HOUSE OF REPRESENTATIVES, }
STATE OF MINNESOTA, Dec. 4th, 1857. }

I hereby certify, that on the 4th day of December, 1857, that Mr. Bradley presented the petition of Geo. B. Kingsley, contesting the seat of Wm. N. Dunham of the fourteenth District, composed of Freeborn and Faribault Counties, and that the Speaker appointed the following gentlemen as an Investigating Committee, to wit: Messrs. Bradley, Wakefield, and Bray, and that the House passed the following resolution:

Resolved, That the Special Committee appointed to investigate and report on the claims of Geo. B. Kingsley to the seat now held by Wm. M. Dunham, have power to send for papers and compel the attendance of witnesses.

A. T. CHAMBLIN,

Chief Clerk of House of Representatives of State of Minnesota.

J. S. WATROUS,

Speaker of the House of Representatives.

Kingsley, B. B. 1858
Dunham, W. N.

Francis Bunker, he right to establish and maintain a Ferry across Minnesota River, wa read a second time.

House Bill No. 2, entitled an Act fixing the compensation of Members and officers of the General Assembly of the State of Minnesota, was read a second time, and referred to the Committee on Ways and Means.

House Bill No. 2, entitled an Act to establish the County of Kanabec, was read a second time, and on motion, referred to Committee on Towns and Counties.

House Bill No. 3, entitled an Act for the Encouragement and Protection of Emigrants q their arrival in this State, was read a second time, and on motion refered to the Judiciary Committee.

Mr. Otis, from the Special Committee, presented the following Report :

To the Honorable the House of Representatives of the State of Minnesota :

The Committee to whom was referred the Resolution instructing the Committee on Ways nd Means, in auditing the accounts for printing the Journal of this House to estimate the measurement of the composition of the same, by the bouil volume, in accordance with the practice heretofore adopted by the Cmptrroller of the United States Treasurer, in auditing the accounts of th late Territorial Legislatures, and in no instance to allow pay for more han one composition, have had the same under consideration, and beg eave to report the Resolution back to the House and recommend its passage.

GEORGE L. OTIS,
H. M. SHEETZ,
E. BRAY,

Committee.

Jan. 12, 1858.

→ On motion of Mr. Pierce the House resolved itself into Committee of the Whole upon the special order of the day ; the contested seat of Geo. B. Kingsley, vs. W. N. Dunlam.

Mr. Pierce in the Chair.

After some time spent therein, the Committee rose and by their Chairman reported the Resolution offered by the Special Committee with a commendation that it be adopted.

Mr. Dow moved a call of the House, which was ordered, and the following members answered to their names :

Messrs. Atkinson, Balcombe, Bartlett, Bearce, Bevans, Bray, Burgess, Butters, Carpenter, Chase, Chown, Crosby, Cruttenden, Cummings, Davern, Decow, Dow, Eames, Foster, Frost, Gaskill, Gibson, Graham, Grover, Hawkins, Hanson, Hinkley, Heyd, S. R. Johnson, Smith Johnson, Keith, Kibler, Kinghorn, Le Blond, Leonard, Libbey, Locke, Lord, Masters, Mackintire, Murphy, O'Neill, Otis, Parker, Peckham, Pettie, Pierce, Poehler, Powers, Randall, Rauch, Rehfeld, Rutan, Scofield, Seeley, Simpson, Sheetz, Tattersall, Stevens. Talbot, Tefft, M. Thompson, T. A. Thompson, Townsend, Tuttle, Vertress, Walker, Wakefield, Way, Willson, Young, and Mr. Speaker.

On motion of Mr. Dow further proceedings under the call were dispensed with.

On motion of Mr. Balcombe the House again went into the Committee

of the Whole to hear the counsel of the contestant and occupant of the seat.

Mr. Balcombe in the Chair.

After hearing the arguments of Counsels upon both sides at length,

On motion Mr. Pierce the Committee arose and reported proceedings back to the House with a recommendation that the resolution offered by the Special Committee be adopted.

Mr. Pierce moved a call of the House which was ordered, and the following members answered to their names :

Messrs. Atkinson, Bacon, Balcombe, Bartlett, Bearce, Bevans, Bray, Burgess, Butters, Carpenter, Chase, Chowen, Crosby, Cruttenden, Cummings, Davern, Decow, Dow, Eames, Foster, Frost, Gaskill, Gibson, Graham Grover, Hawkins, Hanson, Hinkley, Heyd, S. R. Johnson, Smith Johnson, Keith, Kibler, Kinghorn, Le Blond, Leonard, Libbey, Locke, Lord, Lyle, Masters, Mackintire, Murphy, O'Neill, Otis, Parker, Peckham, Pettie, Pierce, Poehler, Powers, Randall, Rauch, Rehfeld, Rutan, Scofield, Seeley, Simpson, Sheetz, Tattersall, Stevens, Talbot, Tefft, M. Thompson, T. A. Thompson, Townsend, Tuttle, Vertress, Walker, Wakefield, Way, Willson, Young and Mr. Speaker.

On motion of Mr. Chase further proceedings under the call were dispensed with.

The question recurring upon the adoption of the resolution.

Mr. Dow in the Chair.

Mr. Burgess moved to adjourn.

The motion was lost.

Mr. Chase moved the previous question.

Carried.

The Chair stated the question to be, the adoption of the resolution reported by the Special Committee.

And the yeas and nays being called for and ordered, there were yeas 51, nays 23.

Those who voted in the affirmative were,

Messrs. Atkinson, Balcombe, Bevans, Bray, Butters, Carpenter, Chase, Crosby, Cruttenden, Cummings, Davern, Decow, Dow, Eames, Foster, Frost, Gaskill, Graham, Grover, Hawkins, Keith, Kibler, Kinghorn, Le Blond, Locke, Lyle, Masters, Mackintire, Murphy, O'Neill, Otis, Pierce, Poehler, Rauch, Rehfeld, Rutan, Scofield, Simpson, Sheetz, Tattersall, Stevens, Talbot, M. Thompson, Tuttle, Vertress, Walker, Wakefield, Way, Willson, Young, and Mr. Speaker.

Those who voted in the negative were,

Messrs. Bacon, Bartlett, Bearce, Burgess, Chowan, Gibson, Hanson, Hinkley, Heyd, S. R. Johnson, Smith Johnson, Leonard, Libbey, Lord, Parker, Peckham, Powers, Randall, Seeley, Tefft, T. A. Thompson, and Townsend.

And the resolution was adopted.

Mr. Kingsley then came forward and took and subscribed to the oath of office.

On motion the House adjourned.

JAMES STARKEY, Speaker, *pro tem.*

Attest :

A. T. CHAMBLIN, Chief Clerk.