

Senate

THURSDAY, JANUARY 6, 1876.

Durfee, I. P.  
Thompson, G. S.<sup>13</sup>

INTRODUCTION OF BILLS.

Mr. Yale introduced--

S. F. No. 1, A Bill to authorize the Board of Education of the city of Winona, to issue bonds for the purpose of erecting a school building.

Which was read the first time, and placed on file for the second reading.

MESSAGES AND OTHER EXECUTIVE COMMUNICATIONS.

The following communication was received from the Secretary of State, S. P. Jennison:

STATE OF MINNESOTA,

OFFICE OF THE SECRETARY OF STATE,

ST. PAUL, Jan. 5, 1876. }

*Hon. A. Barto, President of the Senate:*

SIR--I have the honor herewith to transmit a certified statement of the votes for State Senator, cast at the last general election in the 38th Senatorial District, as desired by the resolution yesterday adopted by the Senate.

But while cheerfully complying with the expressed wish of the Senate, my act is not to be taken as a recognition of the right implied in the language of the resolution of one branch of the Legislature, without the concurrence of the other, to direct the action or prescribe the duties of any officer named in the constitution of the State as a member of the Executive Department. The Supreme Court has repeatedly declared itself powerless to control or advise the official action of such an officer under any law. I maintain that the Legislature can only "direct" such officer by means of and through the form of a legislative act.

I think it my duty, then, respectfully to assert the high constitutional dignity of the office from which I am about to retire.

Very respectfully,

Your obedient servant,

S. P. JENNISON,

Secretary of State.

STATE OF MINNESOTA,

COUNTY OF MARTIN,--SS. }

COUNTY AUDITOR'S OFFICE, Nov. 27, 1875. }

→ We, J. A. Armstrong, County Auditor, within and for said county, and James M. Lasby and F. S. Livermore, Justices of the Peace within and for said county, do hereby certify that we have this day canvassed, according to law, the votes cast for State Senator, at the general election held Nov. 2d, A. D. 1875, and the following named persons had the number of votes set opposite their respective names, in each of the following counties, comprising the 38th Senatorial District, to wit:

Watonwan County,	I. P. Durfee,	261,	Geo. S. Thompson,	418
Nobles	do. do.	236,	do. do.	162
Cottonwood	I. P. Durfee,	445,	Geo. S. Thompson,	54
Murray	no returns.			
Rock	" "			
Jackson	" "			
Martin,	I. P. Durfee,	77,	Geo. S. Thompson,	437
Total,		819		1,071

I. P. Durfee received eight hundred and nineteen votes, (819).

Geo. S. Thompson received ten hundred and seventy-one votes, (1071).

As appears by the returns of said election of the several counties in said Senatorial District, duly returned to, filed, opened, and canvassed and now remaining on file in the office of the county auditor of Martin county.

Witness our official signatures at Fairmont, in Martin county, this twenty-seventh day of November, A. D. 1875.

J. A. ARMSTRONG,  
County Auditor.  
JAMES M. LASBY,  
F. S. LIVERMORE,  
Justices of the Peace.

STATE OF MINNESOTA,  
COUNTY OF MARTIN--SS. }

I, J. A. Armstrong, County Auditor within and for said county, do hereby certify the within and foregoing to be a full and correct copy of the original abstract of the returns of the general election, held in said counties and State, on the second day of November, A. D. 1875, now on file in my office.

Witness my hand and official seal of said office at Fairmont, in said county, this twenty-seventh day of November, A. D. 1875.

[SEAL.]

J. A. ARMSTRONG,  
County Auditor.

STATE OF MINNESOTA, }  
OFFICE OF THE SECRETARY OF STATE. }

I hereby certify that the foregoing is a true copy of the official abstract of votes cast for State Senator in the 38th senatorial district, at the general election held on the second day of November, A. D. 1875, as the same were canvassed by the auditor of the senior county and returned to this office according to law.

And I further certify that from the official abstracts of the votes for Senator in the counties of Murray and Jackson, from which no returns were canvassed by the district canvassing board, it appears that the vote for State Senator in those counties was as follows:

In Murray county I. P. Durfee received one hundred and twenty-nine (129) votes. G. S. Thompson received no vote.

In Jackson county I. P. Durfee received five hundred and sixty-eight (568) votes, and G. S. Thompson received fifty-four (54) votes.

I further certify that no formal returns have been received at this office from Rock county, but the auditor of said county writes as follows:

AUDITOR'S OFFICE, ROCK CO., MINN. }  
LIVERNE, MINN., Nov. 11, 1875. }

SECRETARY OF STATE:

I have no blanks for county officers and members of the Legislature. Below you will find a true statement.

For State Senator, I. P. Durfee received votes 161.

For State Senator, G. S. Thompson received votes 3.

\* \* \* \* \*

Signed,  
[CO. AUDITOR'S SEAL.]

F. HOWARD,  
Auditor, Rock County.

In witness whereof, I hereto set my name and affix the Great Seal of the State, this fifth day of January, A. D. 1875.

S. P. JENNISON,  
Sec'y of State.

[SEAL.]

Mr. Wilkinson offered the following resolution.

Resolved, That the Secretary of the Senate is directed to return to the Secretary of State the communication just read as an uncalled for and impertinent attempt of a subordinate officer of the State to instruct this body in its rights, privileges and duties.

The roll being called there were 34 yeas, and nays none, as follows :

Those who voted in the affirmative were—

Messrs. Archibald, Armstrong, Blake, Brown, Butler, Capser, Clark, Conkey, Daniels, Donnelly, Finseth, Folsom, Gilfillan, Hill, Langdon, Lienau, Macdonald, McGovern, Mayo, Meighen, Murray, Nelson A., Page, Poehler, Robbins, Schoenbeck, Smith J. Jr., Smith J. H., Smith R. L., Stacy, Thompson, White, Wheelock and Wilkinson.

So the resolution was adopted.

Mr. Yale offered the following resolution.

Resolved, That the communication including the abstract of votes from the Secretary of State in relation to the vote cast at the last general election in the 38th Senatorial District, together with all papers on file with the Secretary of the Senate pertaining to said case be referred to a committee of five, to be appointed by the President, with instructions to ascertain the facts involved therein, and report the same to this Senate.

Mr. Murray gave notice of debate.

Mr. Yale moved that the rules be suspended, and that the resolution be considered at the present time.

Which motion did not prevail.

So the resolution was laid over under the rules.

Mr. Meighen moved that the Senate take a recess until eleven o'clock.

Which motion prevailed.

The hour of eleven o'clock having arrived, the Senate took a recess, to meet the House of Representatives in joint convention to complete the canvass of votes cast at the last general election.

Upon the reassembling of the Senate,

Mr. Murray moved that the Senate do now adjourn.

Which motion prevailed.

Adjourned.

CHAS. W. JOHNSON,  
Secretary of the Senate.

Mr. Murray moved that the Senate do now adjourn until Tuesday, at 2 o'clock P. M.

Which motion prevailed.

Adjourned.

Attest:

CHAS. W. JOHNSON,  
Secretary of the Senate.

Senate

1876

Durfee, I. P.  
Thompson, G. S.

#### FIFTH DAY.

SAINT PAUL, Tuesday, January 11th, 1876.

The hour of 2 o'clock having arrived, the Senate was called to order, pursuant to adjournment, by the President.

Prayer by the Chaplain.

The roll being called, the following Senators answered to their names:

Messrs. Blake, Brown, Butler, Capser, Clark, Conkey, Daniels, Doran, Finseth, Folsom, Graves, Hill, Langdon, Lienau, Macdonald, McGovern, Mayo, Meighen, Murray, Nelson A., Nelson K., Page, Poehler, Robbins, Schoenbeck, Smith J. Jr., Smith J. H., Smith R. I., Stacy, Thompson, West, Wheelock, Wilkinson, Williston and Yale.

On motion, the reading of the journal was dispensed with, and approved.

#### PETITIONS.

→ Mr. Nelson K. presented a petition from I. P. Durfee, praying that the Senate proceed to judge of the election in the 38th Senatorial District, and that the petitioner be heard at the bar of the Senate by his counsel,

Which was placed on file.

#### RESOLUTIONS.

Mr. Yale called up his resolution in relation to the contested election case in the 38th Senatorial District, which was laid on the table last Friday.

Mr. Macdonald presented a communication from an attorney for Mr. Thompson, asking that Friday be set as the day for hearing the testimony in the contested election case in the 38th Senatorial District.

Mr. Yale offered the following substitute for the pending resolution--

Resolved, That the contested election in the 38th Senatorial District be made the special order for Thursday, January 13th, at the hour of 11 o'clock A. M.

Which was adopted.

Mr. Murray offered the following resolution, which was adopted--

Resolved by the Senate, the House of Representatives concurring, that the two Houses meet in joint convention this day, at 4 o'clock. P. M., to canvass the votes for Judges of the Court of Common Pleas for the county of Ramsey.

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

Resolved, That the Secretary of State be directed to transmit to the Speaker of the House of Representatives, the abstract of returns of votes cast at November election, 1875, for Judges of Court of Common Pleas of Ramsey county.

#### NOTICES OF BILLS.

Mr. Langdon gave notice that he would introduce a bill to authorize the County Commissioners of Hennepin county to appropriate money to pay clerk hire for Probate Court.

Mr. Daniels gave notice that he would introduce a bill to repeal chapter 41 of Session Laws of 1874.

Mr. Graves gave notice that he would introduce a bill relating to goods, wares and merchandise in store and in transit, and to make receipts and bills of lading therefor negotiable.

Mr. Graves gave notice that he would introduce a bill to provide for the inspection of mineral oils for illuminating purposes.

Mr. Poehler gave notice that he would introduce a bill to appropriate money to assist the borough of Henderson in building a bridge across the Minnesota river at that place.

Mr. Lienau gave notice that he would introduce a bill to authorize the county commissioners of Carver county to issue the bonds of said county, for the purpose of funding the floating indebtedness of said county.

#### MESSAGES FROM THE HOUSE OF REPRESENTATIVES.

Mr. Daniels moved that the Senate concur in the amendment of the House to the Senate resolution, in relation to a joint committee on apportionment, striking out "nine" on the part of the Senate, and "thirteen" on the part of the House, and inserting in lieu thereof, "six" on the part of the Senate, and "twelve" on the part of the House.

Which motion prevailed.

#### SECOND READING OF SENATE BILLS.

S. F. No. 1, A bill to authorize the Board of Education of the city of Winona to issue bonds for the purpose of erecting a school building, Was read the second time.

#### INTRODUCTION OF BILLS.

Mr. Smith Jr., on leave, introduced—

S. F. No. 3, A bill relating to juries in the county of Ramsey, and to repeal certain acts relating thereto.

Which was read the first time and referred to the committee on judiciary.

Mr. Wilkinson, on leave, introduced—

S. F. No. 3, A bill to enable foreign executors and administrators to foreclose mortgages by advertisement.

Which was read the first time, and referred to the committee on judiciary.

Mr. Wilkinson, on leave, introduced—

S. F. No. 4, A bill to amend section nine, of title one, of chapter forty-four, of the compiled statutes of 1866.

Durfee, I. P.  
Thompson, G. S.  
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*Seventh*—First Reading of House Bills.

*Eighth*—Second Reading of Senate Bills.

*Ninth*—Second Reading of House Bills.

*Tenth*—Third Reading of Senate Bills.

*Eleventh*—Third Reading of House Bills.

*Twelfth*—Motions to take up bills, orders and other business from the table.

*Thirteenth*—General orders of the day.

The report was adopted.

#### SECOND READING OF SENATE BILLS.

S. F. No. 5, A bill to repeal chapter 10 of the session laws of 1873,  
Was read the second time.

S. F. No. 9, A memorial relative to cheap transportation,  
Was read the second time.

The following message was received from the House of Representatives:

MR. PRESIDENT—I have to announce that the House has passed the following House files herewith transmitted.

H. F. No. 8, A joint resolution for a mail route, with semi-weekly service from Freeborn, in Freeborn county, Minnesota, to Lake Mills, Winnebago county, Iowa.

Also, H. F. No. 11, A joint resolution requesting Congress to make an appropriation for improvement of Red River of the North.

Also, H. F. No. 17, A joint resolution requesting our Senators and Representatives in Congress, to use their efforts to secure the same modifications of the laws of the United States for the ports of St. Paul and Duluth, as are now extended to other ports in various States.

Also, That the House has passed the following Senate file herewith returned.

S. F. No. 8, A joint resolution requesting our Senators and Representatives in Congress, to use their efforts to secure a congressional bounty for the destruction of grasshoppers.

Also, that the House has concurred in the Senate amendment to—

H. F. No. 2, A bill for an act appropriating money for the legislative expenses of the present session of the State of Minnesota.

Also, That the House has adopted the report of the joint committee on rules and joint rules.

GEO. W. BUSWELL,  
Chief Clerk House of Representatives.

→ The hour of eleven o'clock having arrived, the contested election case in the thirty-eighth district, Durfee vs. Thompson, was taken up, it having been made the special order for this hour.

The name of Geo. S. Thompson was called, and he failed to appear.

The name of I. P. Durfee was then called, and he appeared by his counsel, C. K. Davis.

Mr. Yale moved that C. K. Davis, counsel for I. P. Durfee, be allowed a seat on the floor of the Senate.

Which motion prevailed.

Mr. Nelson K. offered the following resolution, which was adopted:

Resolved, That the Secretary of State be requested to appear before the Senate forthwith with the election returns from the 38th Senatorial District.

In accordance with the above resolution, Mr. J. S. Irgens, Secretary of State, appeared, and was sworn, and testified that he was Secretary

of State, and identified the election returns from the 38th Senatorial District, now offered in evidence, as those on file in his office.

Mr. Davis offered in testimony the notices and depositions, which were read.

Mr. Davis rested the case on the part of the contestant, as far as the testimony was concerned.

Mr. Yale offered the following resolution :

Resolved, That in the contested election case of Hon. I. P. Durfee, contestant, and Hon. George S. Thompson, respondent, that Hon. George S. Thompson, respondent, is not entitled to a seat in this Senate, and that Hon. I. P. Durfee is entitled to a seat in this body, as Senator from the 38th Senatorial District.

Mr. Hill offered the following amendment to the resolution offered by Mr. Yale, which was not adopted :

Resolved, That the testimony in this contest of Durfee vs. Thompson be referred to the judiciary committee, with instruction to report whether, from such testimony, the contestant has proved his right to a seat in this Senate.

The question being taken upon the adoption of the resolution offered by Mr. Yale, and,

The roll being called, there were yeas 37, and nays none, as follows : Those who voted in the affirmative were--

Messrs. Archibald, Armstrong, Blake, Brown, Butler, Capser, Clark, Conkey, Daniels, Donnelly, Doran, Finseth, Folsom, Gilfillan, Graves, Hill, Langdon, Lienau, McGovern, Mayo, Meighen, Murray, Nelson A., Nelson K., Page, Poehler, Robbins, Schoenbeck, Smith J. Jr., Smith J. H., Smith R. I., Stacy, West, Wheelock, Wilkinson, Williston and Yale.

So the resolution was adopted.

Mr. Durfee appeared, and the President administered the oath of office, as follows:

I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Minnesota, and faithfully discharge the duties of my office to the best of my judgment and ability. So help me God.

On motion, leave of absence was granted to Mr. Wilkinson until next Monday.

#### EXECUTIVE COMMUNICATIONS.

The President announced that he had received some Executive communications requiring an executive session, whereupon

Mr. Nelson K. moved that the Senate do now go into executive session,

Which motion prevailed.

After some time spent therein, the executive session rose and resumed business in open session.

Mr. Murray moved that the vacancies in the standing committees, on federal relations, military affairs, towns and counties, and tree planting, caused by the unseating of Mr. Thompson, be filled by the appointment of I. P. Durfee.

Which motion prevailed.

Mr. McDonald offered the following resolution--

Resolved, that the Secretary issue to Senator I. P. Durfee his certificate for 356 miles travel, as Senator of 38th senatorial district.

And the roll being called, there were yeas 36, and nays none, as follows:

Those who voted in the affirmative were—

Messrs. Archibald, Armstrong, Blake, Brown, Butler, Capser, Clark, Conkey, Daniels, Donnelly, Doran, Finseth, Folsom, Graves, Hill, Lienau, Macdonald, McGovern, Mayo, Meighen, Murray, Nelson A., Nelson K., Page, Poehler, Robbins, Schoenbeck, Smith J. Jr., Smith J. H., Smith R. I., Stacy, West, Wheelock, Williston, and Yale.

So the resolution was adopted.

Mr. McGovern moved that 300 copies of the petition presented by him yesterday, in relation to the repeal of the inebriate asylum law, be printed,

Which motion prevailed.

Mr. Clark moved that the Senate do now adjourn.

Which motion prevailed.

Adjourned.

Attest:

CHAS. W. JOHNSON,  
Secretary of the Senate.

## EIGHTH DAY.

SAINT PAUL, Friday, January 14th, 1876.

The morning hour having arrived, the Senate was called to order by the President.

Prayer by the Chaplain.

The roll being called, the following Senators answered to their names:

Messrs. Archibald, Armstrong, Blake, Brown, Butler, Capser, Clark, Conkey, Daniels, Doran, Durfee, Finseth, Folsom, Gilfillan, Hill, Langdon, Lienau, Macdonald, McGovern, Mayo, Meighen, Murray, Nelson A., Nelson K., Page, Poehler, Robbins, Schoenbeck, Smith J. Jr., Smith J. H., Smith R. I., Stacy, West, Wheelock, Williston, and Yale.

On motion, the reading of the journal was dispensed with, and approved.

### PETITIONS AND COMMUNICATIONS.

Mr. Poehler presented a communication from M. Thoeny, Auditor of McLeod county, enclosing resolutions adopted by the board of County Commissioners of McLeod county, asking the passage of a bill authorizing the county of McLeod to loan funds for the purchase of seed wheat, for farmers who lost their crop by grasshoppers in the year 1875.