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ON THIS DAY IN WEST VIRGINIA HISTORY
JANUARY 15

On January 15, 1890, an extra session of the West Virginia Legislature convened in Charleston to determine the winner of the disputed 1888 gubernatorial election between Democrat Aretas B. Fleming and Republican Nathan Goff.

CSO: SS.8.2, SS.8.4, SS.8.23

Investigate the Document: (*West Virginia History*, Vol. VII, No. 4, July 1946, Part II Four Governors)

1. Who were the four men who claimed the state executive office at the conclusion of the controversial 1888 gubernatorial election?

2. What did Governor Wilson consider "his duty?"

3. On what date did the joint session of the legislature meet to try the case, Fleming *vs.* Goff?

4. What do you suppose 'partisanship' is?

5. According to Delegate Harr's story, the clerk of the Senate offered him a $_____ bribe if he voted for Goff. What else did Harr claim was offered in exchange for his vote? Did Goff refute these accusations?

6. The final vote of the legislature voted _____ the winner by a vote of ____ - ____.

7. Will the candidate who received the most popular votes, ever be *truthfully* known? Based on the reading, clarify your response.

Think Critically: In the late 1800s and early 1900s, election results were often disputed. Today, few elections are challenged. What are the requirements to register to vote in West Virginia (e.g., age, place of residence)? How does one register to vote in West Virginia? Where does a person go? What safeguards exist to prevent election fraud? Are there any weaknesses in the system? What factors affect voter turnout? Is informed voting a responsibility or a choice?

The West Virginia Gubernatorial Election Contest 1888-1890

PART II

FOUR GOVERNORS

By James Henry Jacobs

"Four wise men" claimed the state executive office when only one of them, whoever he might be, was legally "staked" to the office. The claimants were E. Willis Wilson, A. B. Fleming, Nathan Goff, and Robert S. Carr.

The occurrences of March 4, 1889, were not "chance happenings." They were assertive. yet methodically planned for the peace and quiet of the state.[328] West Virginians, with an eager but quiet tenseness, awaited inauguration day. There was no established legal precedent to determine who should become governor at the expiration of Wilson's term. It was plainly a case requiring new judgment and fitted to become precedent in itself. Toward the end of February, Wilson invited Goff, Cowden, and Walker to discuss inauguration day.[329] Wilson "regarded it . . . his duty to hold the office in trust . . . until the contest was decided" and Goff "was determined to have his rights." It was agreed that both parties would abide by the decision of the Supreme Court.[330]

In several more days Carr was reported as preparing to become governor *ex officio*.[331] As president of the senate, he was permitted by the constitution to hold the

[328] *The Preston County Journal*, February 28, 1889.
[329] *Ibid.*
[330] *Ibid.*
[331] *Ibid.*; *The Sentinel*, February 16, 1889.

governorship under specified conditions when a seated or a new candidate failed to qualify for the office.[332]

Fleming was the fourth contender "to the throne." On March 4, he remained firmly attached to the background where he preferred to trust to the devices of the Contest Committee in pursuing his proposed election against the *prima facie* election of Goff.

When the assembly purposely avoided the gubernatorial issue, it appeared before the session's end that the Committee had not been able to unravel the contested votes within the two weeks following adjournment and preceding inauguration day.[333] More depositions of illegal votes could be taken until March 10,[334] the end of the forty days allowed for such action after the serving of the counter contest notice upon the original contestant.[335] Feeling that enough evidence could not be properly gathered within that time to justify the contestants' positions the legislators extended the time limit for taking depositions until May 10.[336]

Events of March 4 read like a "blood and thunder" story of gold-rush days. Excepting for a few strangers in Charleston and also for the small groups which congregated on the streets late in the morning to discuss the pending inaugural drama, there was little else to denote that Wilson's exalted position would be shortly challenged.[337] A rumor was heard by the Democrats in the capitol that Goff had an armed force, three or four hundred men who were ready to accompany him. Democrats were determined that Goff would not take the oath of office. Armed men were dispatched throughout the building, sixteen of whom were hidden directly in the governor's office vaults. Before entering the building "Goff counselled moderation on the part of his followers." Armed Democrats prevented many of the Goff followers from entering the building.[338] It appeared that Goff might take oath under duress.

[332] *Constitution of 1872*, Art. VII, Sec. 16.
[333] *The Preston County Journal*, January 31, 1889; *The Sentinel*, February 9, 1889.
[334] *House Journal*, 1889, p. 308.
[335] *Code of 1887*, Chap. VI, Sec. 13.
[336] *House Journal*, 1889, pp. 396-397.
[337] *The Preston County Journal*, March 7, 1889; *The Wheeling Intelligencer*, March 5, 1889.

Goff, Cowden, Captain Henry C. McWhorter, and some spectators entered the governor's reception hall. There the *prima facie* governor-elect accepted Wilson's courteous invitation to his office for a few moments. At high noon Goff mounted a chair in the crowded reception room and in an inaugural speech of defensive oratory flailed the means brought to prevent him from being declared governor.[339]

He declared the Democratic venture a "pre-arranged plan" by a legislative caucus and that "the Speaker of the house of delegates [*sic*], in obedience to his party, failed to perform his constitutional duty of 'opening and publishing the returns,' and declaring the person . . . elected who had received the highest number of votes for . . . Governor." Goff was administered the oath of office by McWhorter, and then with Cowden he marched into Wilson's office and there demanded possession of the property, and insignia of the gubernatorial office. As pre-ordained, Wilson refused, saying that since no declaration of office was made by the joint assembly "he believed it his duty to hold office" until a declaration would be made. Goff replied that the legislature's failure to declare who was elected did in no wise affect the election. He told that certified returns from every county in his possession proved his election by a plurality. In his suave and dignified manner he thanked Wilson for promising assistance to secure an early settlement in court.[340]

A few minutes later Carr went to the governor's office and A. D. MacCorkle administered to him the oath of office, whereupon he formally demanded Wilson's office. He quoted Article VII, Section 16 of the Constitution as

[338] MacCorkle, *op. cit.*, 437.
[339] *The Preston County Journal*, March 7, 1889; *The Wheeling Intelligencer*, March 5, 1889.
[340] *The Preston County Journal*, March 7, 1889; *The Wheeling Intelligencer*, March 5, 1889.

his authority to office, applying the clause "failure to qualify" to Wilson, because his four year term by election ended on March 4. Wilson repeated the reasons he had given Goff for continuing in office.[341]

Goff's and Carr's inauguration brought two questions before the West Virginia Supreme Court of Appeals for settlement: Was Goff entitled to discharge gubernatorial duties? And if not, who should act as governor?

Goff petitioned the Court for a *mandamus* writ to require Wilson to show why he should not surrender his office.[342] The plaintiff's attorneys stated that the legislature's failure to declare Goff elected was non-effectual upon his right to office, and that Wilson's legitimate term ended March 4, 1889.[343]

Agreement was reached between the plaintiff and the respondent that the case should be decided purely upon the petition and Wilson's demurrer and motion to quash the petition.[344] At the outset the Court conceded that Goff's title, if proved, could demand a *mandamus* writ.[345]

According to the Court's reviewal of the case, the joint assembly had to consider seriously whether it was duty-bound to declare a person governor before the contest was decided.[346] A declaration might have resulted in a non-elected person's heading the executive office, but the contest decision was needed to determine the fact that election before the declaration could be made. A person had no legal right to office, the Court believed, before the determination of the fact of election.[347]

It was decided that the case of Goff *v.* Wilson did not warrant adjudging the assembly's actions though it was written, favorably to Goff, that the law providing a declaration of a governor, based on the *prima facie* title to

[341] *The Preston County Journal*, March 7, 1889; *The Wheeling Intelligencer*, March 5, 1889.
[342] 32 *W. Va.*, pp. 394-395.
[343] *Ibid.*, p. 394.
[344] *Ibid.*, p. 395.
[345] *Ibid.*, p. 396.
[346] *Ibid.*, p. 398.
[347] *Ibid.*, p. 399.

office, might have been intended to precede the contest.[348] On the other hand, President Adam C. Snyder said the constitution's framers contemplated that the legislature would provide for the settling of a contest before March 4, and that it was scarcely feasible that they or the adopters ever contemplated a non-designated person's discharging the gubernatorial duties. "The . . . guarded provisions of the constitution . . . [and] its general policy forbid any such construction, unless there be no escape from it,"[349] continued the justice.

The defective statute, wherein it failed to provide for a determination of a contest before the end of the incumbent's term, had only increased the joint assembly's dilemma. Joint assembly action allowing the election returns and certificates to be sifted by a contest committee without immediately naming an apparently elected governor was deemed, in the Court's decision, as not "unreasonable or unjust under the peculiar and embarrassing circumstances of the situation . . . ."[350]

In this case the Court had to seek chiefly whether the assembly possessed "the constitutional right" to determine the election question. Furthermore, it had to decide whether the assembly had legal and inherent possession of discretion, when it chose the manner and the time for determining the question. Here, the Court wrote that *mandamus* could be invoked "to compel the decision of a discretionary question," but it could not be used to dictate, control, review, or correct the decision. It reasoned that the house speaker and the joint assembly were quasi-judicial, because they were looked upon as possessing discretionary power to determine false and contested certificates and to declare a person elected. Snyder said, "it is hardly possible to conceive of a public office, the duties of which do not require of the officer filling it the exercise of discretion."[351]

[348] *Ibid.*, pp. 399-400.
[349] *Ibid.*, p. 400.
[350] *Ibid.*
[351] *Ibid.*, p. 401.

Since county election commissioners, acting as counting boards, used discretion to determine the genuineness of election certificates, Snyder held that it was equally reasonable and proper that the joint assembly should also determine the legality of certificates which determination "involves the exercise of a discretion . . . ," not controllable or reviewable by *mandamus*.[352] The Court was powerless to issue the mandatory writ because the assembly had not failed to use its discretionary power.[353]

Goff had appended to his petition the *House Journal* containing the joint assembly's proceedings. From it Snyder easily deduced that the few county election certificates for governor considered by the assembly were insufficient proof of Goff's claim of 78,714 votes.[354] The Court cited that it was not privileged to exercise the power of another department of government, that is to exercise the power to name or declare a new governor, when the power was expressly conferred upon the legislature.[355] With this opinion it held that "declaration . . . [was] the only constitutional evidence of . . . [a candidate's] title to . . . office."[356] These matters were decided by the constitution's framers and by the people when they adopted the constitution.[357] These opinions were responses to Goff's counsel, who had argued that their client was the holder of the highest number of votes, that a declaration of election was not necessary to qualify him as governor, and that the judiciary had power "by absolute necessity" for the people's rights to decree the next governor.[358]

On March 13, the day following Goff's failure to win his round in Court, Carr prayed for a *mandamus* writ, this one to compel Wilson to surrender his office to him.[359] Carr used Section 1 of the constitutional Article VII, "in

[352] *Ibid.*, p. 402.
[353] *Ibid.*, p. 404.
[354] *Ibid.*
[355] *Ibid.*, pp. 393, 404, 405; *Constitution of 1872*, Art. IV, Sec. 11, Art. V, Sec. 1, Art. VII, Sec. 3; *Code of 1887*, Chap. III, Sec. 23.
[356] 32 *W. Va.*, p. 406.
[357] *Ibid.*, p. 405.
[358] *Ibid.*
[359] *Ibid.*, pp. 419-420.

case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed . . . ."[360] He argued that Wilson's term had ended and claimed that since Goff had failed to qualify for office, as laid down by the court in Goff *v.* Wilson, he himself, was *ex officio* governor.[361]

Wilson's authority was the clause which related that, "All officers elected or appointed under the constitution may, unless in cases herein otherwise provided for, be removed from office for official misconduct, incompetence, neglect of duty or gross immorality, in such manner as may be prescribed by general laws, and unless so removed they shall continue to discharge the duties of their respective offices until their successors are elected and qualified."[362] Generally, Wilson's filed return was echoed in the Court's decision. He portrayed his stand relating to the proposed vacant office, Carr's right to act as governor, and the idea that the elected candidate for office was known.[363]

The Court looked upon the constitutional clause quoted by Wilson as a general rule and considered that it applied to the governorship unless deviated therefrom by an exception which would have to be strictly and concisely construed. Carr's authority was dubbed an exception which did, wherein it applied, remove the governor from under the general rule.[364] Brannon rationalized that an exception had not arisen within the true meaning of the term "failure to qualify," and "other disability" to allow Carr to be *ex officio* governor, and that they could only apply if Goff had been declared governor and then failed to "qualify."[365]

[360] *Ibid.*, pp. 420, 423; *Constitution of 1872*, Art. VII, Sec. 16.
[361] 32 *W. Va.*, pp. 420-421.
[362] *Ibid.*, p. 423; *Constitution of 1872*, Art. IV, Sec. 6.
[363] 32 *W. Va.*, p. 421.
[364] *Ibid.*, pp. 424-425.
[365] *Ibid.*, p. 425.

The justice regarded the law stating the governor must be declared elected, and all other constitutional requirements as mandatory and indispensable.[366] Using the case of People *v.* North, of the New York Court of Appeals, he determined that the declaration and certification of an officer were necessary to complete his election, and (quoting People *v.* Crissey, in the same court) that where the necessary declaration of an officer had not taken place as a qualifying factor the old incumbent "held over."[367] The prerequisite declaration of governor dashed Carr's hopes to fragments because, the Court ruled, a predecessor must have been declared elected before he could legally fail to qualify.[368]

Without a declared governor there existed a vacancy or "disability of the governor," argued the plaintiff's counsel. The clause used by Carr, here reiterated in abridged form, read, "In case of the death, . . . failure to qualify, . . . or other disability of the Governor, the President of the Senate shall act as Governor . . . ." The Court clearly imposed its opinion in certain terms that Carr misinterpreted the usage of the word "governor." The term was attached to one who could properly act as governor and Carr would have to fill an incumbent's place.[369] The weak spot in Carr's argument was again that he would have to displace a predecessor who would have to be sitting in order to have a disability attached to him, but he himself had said that after March 4 the governorship was vacant.

A governor suffering a disability, wrote Brannon, was not a person who was incompetent in the light of the "votes of the people and the authority selected to declare his election," but rather it was some disabling feature attached directly to him.[370] Before the disability clause could apply to Carr to make him governor, the people and the legislature, it was said, must have first done all constitutionally

[366] *Ibid.*, p. 426.
[367] *Ibid.*
[368] *Ibid.*, p. 427.
[369] *Ibid.*, p. 428.
[370] *Ibid.*, p. 429.

required of them.[371] A non-declaration was not, therefore, a disability as meant by the constitution. Brannon believed death, failure to qualify, etc., enumerated in the law used as Carr's authority would produce a vacancy.[372]

Wilson's authoritative source was respected as binding his continuance in office because, according to the Court, the clause relating to the president of the senate, provided for a different class of cases "where the election is complete, but [where] there is a vacancy caused by death or other fact, or a disability preventing his action."[373]

In order that he might be said to have a predecessor's place to fill, Carr contended that either Goff or Fleming was bound to have been elected in November, 1888. This opinion the Court considered was untenable, because it could not be legally proved and furthermore a tie might have been the result.[374] Carr's case, for the purpose of deriving any benefit from the election, was a failure. Especial mention was made by the Court that Carr did not come within the exception to the general rule relating to the governor's "holding over." Under the general rule, Wilson was entitled to keep his seat until deposed by a qualified governor.[375]

The case of Goff *v.* Wilson decided Goff was not entitled to office, but that of Carr *v.* Wilson bore two answers. It invalidated Carr's title to office, and consequently safeguarded Wilson's.[376]

Considering the constitutional provision disallowing a governor to succeed himself immediately upon the completion of his term,[377] Henry Brannon declared Wilson entitled to a prolonged term.[378] His eligibility and qualifications for the previous four-year term, it was ruled, "tested" his competency and permitted him to "hold

[371] *Ibid.*, p. 428.
[372] *Ibid.*, p. 429.
[373] *Ibid.*
[374] *Ibid.*, p. 430.
[375] *Ibid.*, pp. 430-431.
[376] *Ibid.*, p. 431.
[377] *Constitution of 1872*, Art. VII, Sec. 4.
[378] 32 *W. Va.*, p. 431.

the absence of a record, the majority members refused to consider the extension. They said, furthermore, that if the circuit court had changed the town boundary it had no authority to go beyond the law and, thus, infringe upon the jurisdiction belonging to the justices of peace. According to the constitution only the justices of peace were allowed to change the magisterial voting districts.[496]

To muster strength the minority cited instances recognizing the alleged new district lines. The foremost instance, which was cited, took place on August 13, 1878, when the county court conceded the change by ordering a new voting place for Cross Creek district. This it did because the former voting place was located in the area supposedly included in the Wellsburg district.[497] Nonetheless, in this affected area Fleming won the day.[498]

The facts in the Ohio and Braxton County cases were more obscure than in Brooke County, for the justices alone had authority to change the voting districts, there was no record. The circuit court was empowered to change only the town line of Wellsburg.[499] Through the majority's eye these facts nullified the votes; but the minority members, also with valid arguments, said that the voters polled at the only place available, and where they had voted for ten years. They preferred adherence to the legal maxim, "when a vote has been received . . . by officers who have complied with the law in its reception, the law will presume that the vote is legal."[500]

Willingly the minority members referred to the majority's decision in Braxton County. They claimed that an irregular order in Brooke County ought to be sufficient to change a district line if an irregular order, as they termed it, were sufficient in Braxton County. They quoted verbatim the majority's declaration (Braxton County) that

[496] *Majority Report*, pp. 37-38; *Constitution of 1872*, Art, VIII, Sec. 25.
[497] *Minority Report*, pp. 428-429.
[498] *Majority Report*, pp. 38, 153; Table IV, pt. I, WEST VIRGINIA HISTORY (April, 1946), pp. 210-220.
[499] *Majority Report*, p. 37, paraphrasing Chap. LXXVIII, Sec. 6, p. 112, *Acts of 1877*.
[500] *Minority Report*, p. 429.

the change had the color of legality and that authorities' actions could not deprive one of his voting right.[501]

The problems arising from Mercer, McDowell, Kanawha, Braxton, Ohio, and Brooke Counties required more committee work than those from elsewhere. Problems from other counties were ephemeral in comparison, though collectively the individual votes treated in them, mostly through the majority, aided in voiding enough Republican and Democratic votes to give Fleming a lead of 237 votes. Only thirteen of the 54 counties remained unscathed by the charges and by committee work.

A tabulation by the Democratic majority counted 78,697 votes for Fleming and 78,460 for Goff; and on the strength of these, the majority reported that Fleming had been the candidate elected.[502] Holding to its views, the minority accredited Goff with 78,792 votes and Fleming with 78,652, an insecure but true lead of 140 votes for Goff, and recommended that "Goff be placed in the possession of the . . . office until the . . . contest . . . be disposed of."[503]

Even though they may have endeavored to interpret problems unbiasedly the political leanings of both Republican and Democratic members of the Joint Committee are apparent in their reports. It is difficult to say that the Committee, chained to politics, can be credited with solving the contest, for the facts were often too controversial for settlement. Its greatest achievement was the gathering of evidence and calling it to effect conclusions. The legislature received the fruits of the work.

THE DECISION

Governor Wilson's message of December 18, 1889, calling an extra session of the legislature to consider primarily

[501] *Ibid.*, pp. 429-430.
[502] *Majority Report*, pp. 153-154; Table IV, pt. I, WEST VIRGINIA HISTORY (April, 1946), pp. 219-220.
[503] *Minority Report*, pp. 467-468.

the settling of the gubernatorial contest,[504] brought about a renewal of faith among the Democrats and Republicans in the right of their respective views. This renascence of feeling followed the many dismal months of waiting for the time when the election of 1888 would be settled.

As a judicial body, the joint session of the legislature met for the first time on Thursday, January 16, 1890, to try the case of Fleming *vs.* Goff.[505] Astute representatives of political circles and the people were drawn together to name West Virginia's new governor. We are told by a Republican journal that Fleming's success was generally conceded, though some of his friends remained doubtful of it.[506] The Democrats who had apprehensions realized the extremely close partisan alignment between Fleming and Goff men in the joint session.[507]

Roger P. Chew, Alexander C. Moore, and John M. Sydenstricker of the house, and George E. Price and Presley W. Morris of the senate were appointed a committee on rules to determine regulations for the government of the joint session.[508] The legislature accepted the five rules presented on January 20 and 21 by the committee chairman, Mr. Price; and at 11 o'clock on the morning of January 22 the struggle began.[509] Okey Johnson, as counsel for Fleming, opened the debate, and, following the Goff argument, St. Clair concluded it within the five hours allowed the contestant for the closing round. William P. Hubbard argued for Goff and was followed by Goff in his own behalf.[510]

While the committee on rules was convening, Hubbard approached it and suggested that Fleming be invited to argue his case.[511] This wedge, of course, could be interpreted as an effort to obtain a hearing for Goff, who realized his oratorical capabilities. Contrariwise, though Fleming was a good and earnest persuader, he was not a Cicero, nor did he possess any of Goff's captivating flash.[512] Answering Hubbard's suggestion, which had reached him through the papers, Fleming discreetly wrote to St. Clair from Fairmont that he had confidence in the ability of his counsel, and that "it would be out of place, indelicate and presumptuous, for the parties to appear . . . in the attitude of counsel." Though Democrats were divided on the proposition of allowing Goff to speak, Fleming at the same time made it clear that he did not object to Goff's arguing his own case, if the joint assembly were willing.[513]

Consequently, among the rules presented to the joint session, there was one which permitted either the contestant and/or the contestee to appear within the time allowed for each counsel's argument.[514] Fleming kept his word not to appear before the bar for himself. Throughout the proceedings he could often be found among his Democratic friends within the rear of the assembly chamber.[515] Goff and his counsel sat near the bench, and when Hubbard finished the contestee's opening argument, his client, despite Democratic chiding, rose and availed himself of the opportunity to speak. His utterances brought a gusto of plaudits from admirers and derision from his opponents.[516]

Under the rules the majority and minority of the Contest Committee were each permitted six hours "to discuss the matters involved in the case," with the chairman having the right to conclude the discussion.[517] Sprigg spoke for the majority, and Maxwell and Morris divided the minority time between themselves and addressed the assemblage. Under the accepted rules, committee members

[504] *House Journal*, 1890, pp. 4, 10.
[505] *Ibid.*, pp. 32-33, 469.
[506] *The* (Weekly) *State Journal*, January 16, 1890.
[507] *Ibid.*, January 23, 1890; Wheeling *Register*, February 5, 1890.
[508] *House Journal*, 1890, p. 469.
[509] *Ibid.*, pp. 469-470.
[510] *Ibid.*, pp. 471-474; *The* (Weekly) *State Journal*, January 24, 1890; Wheeling *Register*, January 23, 1890.
[511] *Ibid.*, January 20, 1890.
[512] MacCorkle, *op, cit.*, pp. 432-435; *The* (Weekly) *State Journal*, January 30, 1890.
[513] The Charleston *Daily Gazette*, January 24, 1890; Wheeling *Register*, January 20. 1890.
[514] *House Journal*, 1890, pp. 470-471.
[515] Wheeling *Intelligencer*, January 24, 1890.
[516] *The* (Weekly) *State Journal*, January 30, 1890; Wheeling *Intelligencer*, January 25, 1890; Wheeling *Register*, January 23, 1890; T. S. Riley to Fleming, January 23, 1890, Fleming MSS.
[517] *House Journal*, 1890, p. 471.

could yield some of their time to members of the legislature. As a result, Samuel L. Flournoy and Price each expostulated the Democratic view for one-half hour through the courtesy of Chairman Kee, who followed them.[518]

Rabid partisanship formed the core of all these harangues. They dealt with sundry matters in the Contest Committee's reports and frequently dwelt on isolated voting instances, according to speakers' views. Various arguments, some questionable, and the Supreme Court cases were used as battering-rams in the verbal melee. As he saw them, each speaker gave his rendition of the wrongs in the case, and drove them against the opponent. In newspapers, the defense speeches and those of the Contest Committee and of the two legislators who spoke were denounced and eulogized along party lines. Regardless, considered together the speeches themselves are imponderable.[519]

Democratic arguments declaimed their position and their right to protect themselves from being fraudulently deprived of the state's most influential office. Republicans derided the 46-45 vote of the 1889 legislature not to declare which candidate was elected until the illegal voting charges were probed. They declared that the *prima facie* returns should have been given first consideration, and that no systematic fraud existed at the election. Before his listeners Goff himself said that the case was not a "personal controversy" but one of the people who elected him. He further declared that trainloads of voters were not brought into the state in Mercer and McDowell Counties, and that no colonizers were brought into those areas for voting purposes.[520]

The statement that there was no systematic fraud was apparently true. If one wishes to call votes fraudulent on

[518] *Ibid.*, pp. 471, 474-477; *The* (Weekly) *State Journal*, January 30, and February 1, 1890; Wheeling *Register*, January 31, and February 1, 1890.
[519] *The* (Weekly) *State Journal*, January 25, and 30, 1890; *The* (Weekly) *State Journal* Supplement, January 30, 1890; Wheeling *Intelligencer*, January 24, 25, and 30, 1890; Wheeling *Register*, January 27, and 28, 1890.
[520] *Ibid.*

the grounds of non-residency, minority, pauperism, insanity, conviction for felony, and/or non-citizenship then the term applies. Here a distinction ought to be drawn between illegal votes and votes cast fraudulently, that is, influenced by undue means. No evidence at hand, however, supported the charges of *systematic* fraud or vote buying.

An isolated incident in the speeches exhibits the strategy used by each side to enforce its views on the audience. This instance refers to poll lists. In their arguments Hubbard, and on the following day, Goff had accused the majority of the Contest Committee with the responsibility of having rejected Goff votes in Mercer and McDowell Counties, when the voters' names were not in the poll lists. A like imputation had been made, according to Kee, chairman of the Contest Committee, when Hubbard, the day preceding his speech, had been permitted to eye the poll lists printed in the majority report. Kee was amazed, because Hubbard was sustained by the majority report.[521]

The Democrats, after an investigation, said that Goff had in his hands the *original* poll lists when he made the charge and implied that Hubbard knew of them, for, they said, it was he who gave them to Goff. St. Clair said Hubbard possessed the original lists for twenty-four hours before making his speech. When the original lists were returned to Kee after Goff's tirade, Kee therein discovered the names of all the rejected voters. The majority had simply erred in copying the lists into its report.

St. Clair said both Hubbard and Goff based their argument on a "false and deceitful assumption."[522] Before the assembly Goff chided St. Clair for remaining silent when he publicly asked for certification of the lists and the case as he had painted it. St. Clair explained that he remained reticent because he did not propose to help Goff's argument.[523]

[521] *The* (Weekly) *State Journal*, January 25 and 30, 1890; Wheeling *Register*, January 25, 1890.
[522] *The* (Weekly) *State Journal*, January 30, 1890; Wheeling *Register*, January 25, 1890; Wheeling *Sunday Register*, January 26, 1890.
[523] Wheeling *Sunday Register*, January 26, 1890.

On Friday, January 31, the last argument was made by Kee as chairman of the Contest Committee. Immediately thereafter he resolved, in compliance with an accepted regulation reported two days previously by the majority of the committee on rules, that, because of the evidence and the reports, Fleming be "declared to have been duly elected . . . . " Price, however, apparently, because of the late afternoon hour, moved for the adjournment until the next day, Saturday, which motion was sustained by the body.[524]

Another anticipated moment in the contest was due to arrive but not without an obstruction. The Wheeling *Register* reported that there was a Republican effort to search for an "honest man" whose vote could be bought.[525] William A. MacCorkle in his *Recollections of Fifty Years*, tells us that two necessary votes were unpredictable.[526] What transpired on the next day may have been a threat of the Democrats to keep party weaklings in line. It is possible, however, that the evidence found in the *House Journal* and newspapers is representative of the facts.

Nonetheless, just as the resolution declaring Fleming elected was about to be considered, delegate David M. Harr of Marion County, arose to a question of privilege and sent a manuscript to the clerk's desk to be read.[527] A stillness cloaked the joint session during the reading of the paper. In it Harr related a story of bribery which, with any other discovery of an attempt to influence voters improperly, a committee was appointed to investigate and report to the joint session. The committee men were Price, Nathan B. Scott, David W. Shaw, Alexander C. Moore, and Roger P. Chew.[528]

According to Harr's story, A. R. Stollings, engrossing clerk of the senate, sent for Harr while he was in the

[524] *House Journal*, 1890, pp. 475, 477; Wheeling *Intelligencer*, February 1, 1890: Wheeling *Register*, February 1, 1890.
[525] *Ibid.*, February 1, and 27, 1890.
[526] MacCorkle, *op. cit.*, p. 441.
[527] *House Journal*, 1890, pp. 478-479.
[528] *Ibid.*, p. 479; Wheeling *Register*, February 3, 1890; Wheeling *Sunday Register*, February 2, 1890.

Opera House Friday evening and offered him $1800.00, if he would vote for Goff. He also promised Harr the mine inspectorship of the first mining district of the state, if Goff were elected. Harr pretended that he wanted the money before voting and refused even to agree to vote for Goff, unless he received one-half the amount offered. Stollings preferred to wait until the morning and after consulting friends would pay $900.00, in which case Harr agreed that he would vote for Goff.[529]

In his statement Harr clearly stated his adherence to Fleming's cause. To explain his position and objective, Harr further wrote, "in view of the fact that there has been so much said by . . . Goff and his friends . . . that there was no fraud in the election . . . I regarded it my duty to listen to the corrupt propositions of this Republican official, to which I have referred, and to expose the same to this Joint Assembly."[530]

Among the many remarks Morris considered the affair a plot to discredit Goff and wanted the joint session to continue its work before making an investigation. Alexander R. Campbell insinuated that "the communication was only a Democratic move to gain time." On the other hand, Kee in his speech, tried to implicate W. J. W. Cowden, chairman of the state Republican executive committee, in political improprieties and Price made the motion establishing the investigating committee.[531]

In the interim, a Democratic effort to win the contest got under way two days before the final voting was expected and the Harr charges were made. From the time that MacCorkle had, of his own volition, instituted Fleming's recount in Kanawha County he had been left out of the contest proceedings and, as he said, "had been dismissed summarily." He blamed Henry S. Walker for his "undoing." On Thursday, Walker had entered MacCor-

[529] *House Journal*, 1890, p. 478; Wheeling *Register*, February 3, 1890; Wheeling *Sunday Register*, February 2, 1890.
[530] *House Journal*, 1890, pp. 478-479.
[531] *Ibid.*, p. 479; Wheeling *Register*, February 1, 1890; Wheeling *Sunday Register*, February 2, 1890.

kle's office and asked him to overlook his personal feelings for the sake of his political tradition and because the Democratic vote was narrowed down to two persons. One, he said, could be influenced only by MacCorkle.[532]

Walker explained that it was understood that Senator Azel Ford of Raleigh County was not satisfied with the majority testimony and intended to support Goff. He said Ford was interested with a J. C. Bullett, a Democrat in Philadelphia, "in some very large interests" of the Norfolk and Western Railroad. It was believed that Bullett could influence Ford. MacCorkle left immediately to see his old college mate, Josh C. Bullett.[533]

At ten o'clock Friday morning MacCorkle arrived in Philadelphia, and was amazed by Walker's mistake which he discovered when Mrs. Bullett, in the office, introduced him to Bullett. The man explained that he was L. C. Bullett, a cousin of Josh C. Bullett. MacCorkle was perplexed and, as an only course, boldly explained his mission. Bullett was not disposed to interfere and practically dismissed the conversation, when Mrs. Bullett intervened.[534]

MacCorkle was encouraged, when Mrs. Bullett explained to her husband that she was a southern Democrat and that she knew MacCorkle's people in Virginia. She felt that MacCorkle should be heard and suggested that Bullett go to West Virginia with MacCorkle. The three parties arrived at the Charleston station Saturday morning at twelve o'clock, and were met by Walker who told that Ford had freely expressed himself for Goff.[535] Immediately after Harr's charges and the partisan discussion relating thereto, they all arrived at the capitol in a swiftly moving carriage.

Maxwell had just offered a substitute resolution for the one declaring Fleming governor. The substitute declared Goff duly elected, but before it could be finally considered

[532] MacCorkle, *op. cit.*, pp. 439-441.
[533] *Ibid.*, pp. 441-442.
[534] *Ibid.*, p. 442.
[535] *Ibid.*

Bullett and his wife walked over to Ford, amidst the intense excitement. Mexico Van Pelt craftily moved for an adjournment until Tuesday morning, which motion, against Republican wishes, carried by a 46-40 vote, leaving the investigating committee time in which to work and also allowing enough time for Bullett to convince Ford of a need of voting for Fleming.[536]

Since partisanship was paramount on both sides, Fleming probably would have been elected, at this time, by a vote of 44 to 42. The Democrats must have felt, however, that they could not take a chance to lose, or that they should not risk a break in their political solidarity. This 44-42 conjecture gives the Republicans the votes of Ford and the other Democrat, Lindsey Merrill, delegate of Wirt County, whom Walker had mentioned to MacCorkle. Carr, the labor man and presiding officer of the joint session, is computed among the 44. It was during the elapsing period between Saturday and Tuesday that both these Democrats who had wandered from the fold were brought within the political confines of their party.[537]

During the reading of Harr's paper, Goff sat amidst his Republican friends. When the assembly was almost clear Goff and Hubbard approached Stollings in the rear of the chamber, where he had stood throughout the making of the charge against him. It appeared that they questioned and advised Stollings.[538]

At the investigation, in the room of the senate committee on the judiciary, held privately against Hubbard's wish, those concerned appeared. Stollings was accompanied by his counsel Wesley Mollahan and Henry C. McWhorter; Harr was accompanied by St. Clair. At great length Harr testified, and was cross-examined until the adjournment. His testimony was substantially the same as his charges, except that he described a previous effort of Stollings to bribe him. Harr made it clear that the

[536] *House Journal*, 1890, pp. 479-480; 483-484.
[537] MacCorkle, *op. cit.*, pp. 443-444; *The* (Weekly) *State Journal*, February 6, 1890.
[538] Wheeling *Register*, February 3, 1890; Wheeling *Sunday Register*, February 2, 1890.

incidental reference in his notice to the joint assembly stating that he had seen the money, was a misunderstanding on the part of St. Clair who prepared the writing.[539]

After a Sunday of high speculation on political matters in Charleston,[540] the investigating committee resumed its searching. Among several witnesses the most important to the case were Henry Cunningham, state mine inspector, Stollings, Carr, and Goff. Cunningham said that he was told by Stollings that $1200.00 might be secured to influence votes for Goff, that Goff could be seated, and that Harr was the weakest member in the house of delegates. He said, however, that he had had no conversation with Stollings "to bribe Harr." In regard to an interview he had had with Goff, Cunningham denied ever offering him the mine inspectorship, meaning of course, as a gift for someone.[541]

Stollings denied the charges placed against him. He said that on Friday evening, January 31, someone, whom he did not know, informed him in the hall of the Ruffner Hotel that "Dave" Harr wished to see him. Delegate Adam E. Aultz of Kanawha County, accompanied him as far as the Opera House. Stollings said that in a note he had asked to come out but neglected to inquire of his business. According to Stollings, Harr had revealed that he was asked by Azel Ford to vote for Goff and was impressed with Ford's reasoning. Not only this, said the witness, but Harr wanted a meeting with Ford to be arranged by Stollings.

Stollings stated that he had returned to the Ruffner Hotel in an unsuccessful search for Ford. He then proceeded to a place near the Opera House, where he said he had, as planned, met Harr, accompanied by his cousin, John M. Harr.[542] It was learned in Harr's testimony that his cousin at this point had returned to the Ruffner

[539] *Ibid.*
[540] Wheeling *Register*, February 3, 1890.
[541] *Ibid.*, February 4, 1890.
[542] *Ibid.*

Hotel.[543] Stollings testified that Harr and he moved up Capitol Street and at the Capitol their conversation terminated.

Stollings related that he hoped Harr would vote with Ford but that money was not mentioned. He said that on Saturday morning he saw Ford and Harr conversing at the door of the joint assembly and, in passing, he quickly whispered to Harr, "I see you have your man."[544] Harr had testified that on that morning Stollings, in the assembly hall, said he had the money in his pocket.[545]

Carr's testimony is similar to and reaffirms that of Harr. He recalled being told by Harr of the Stollings meeting and of suggesting that Harr play the game. He had further suggested that Harr have a paper containing the facts made out by St. Clair for presentation to the joint assembly.[546]

Goff had spent the entire day observing the proceedings and in the evening, shortly after eight o'clock, he testified. His honesty and truthfulness, which he mentioned, were not questioned and in no way was he embarrassed. He said that if it had not been for the manner in which his name became involved in the case he would not have requested to appear before the committee. Goff declared that he had never spoken to Stollings about Harr's vote and had not agreed to give money for it. He said, furthermore, that he had never promised any offices in return for votes and that Stollings had had no power to promise the mine inspectorship, if he did.

Cunningham had called upon him in his room in the Ruffner Hotel, Goff revealed, and complained that his office was being raided, that he intended to resign and have Governor Wilson appoint Harr. According to Goff, Cunningham had thought this would assure one less vote for Fleming. When Goff asked him to discontinue his conversation, he left the room.[547]

[543] *Ibid.*, February 3, 1890; Wheeling *Sunday Register*, February 2, 1890.
[544] Wheeling *Register*, February 4, 1890.
[545] *Ibid.*, February 3, 1890; Wheeling *Sunday Register*, February 2, 1890.
[546] Wheeling *Register*, February 4, 1890.
[547] *Ibid.*

When the joint session convened, Tuesday morning, Chew, Shaw, and Chairman Price, Democrats, presented a laconic report. It held that the evidence in the Stollings-Harr case was of such a contradictory character, embracing Harr's charges and Stollings' denial, that they could not feel justified in saying the charges were sustained or that the evidence justified any further action by the joint session.[548]

Though Moore and Chew, Republicans, agreed to the foregoing report, including the statement that Stollings' explanation was unsatisfactory, they took exception to the majority statement that the evidence "was sufficient to create in our minds a grave suspicion" that Stollings had made improper proposals to influence Harr.[549] Perhaps their exception also was intended to nullify the view that Stollings' explanation was unsatisfactory.

Carr, the presiding officer of the joint session, upon request, caused a statement by Moore to be entered upon the *House Journal*. It stated that nothing was disclosed in the investigation to implicate Fleming or Goff "in any improper measures to influence any vote . . . ."[550]

The tall angular Mr. Ford was then heard. He said that in justice to himself, because his name had been connected with charges of corruption, he wished an apologetic letter which he had received from Harr to be recorded in the minutes. This was done. In this significant letter Harr cited his testimony before the investigating committee in which he had referred to a conversation he had had with Ford on the previous Friday evening, the same evening Stollings had talked with Harr. It should be mentioned here that Harr had told the Committee that Ford had offered him a mine superintendency, if he would vote for Goff.

In his letter Harr said that he had not intended to intimate that he regarded Ford's offer as a bribe or inducement but rather he intended to show it to be an expression of Ford's friendship to be manifested independent of Harr's action in the choice of governor.[551] Though in the joint session he voted with the Democrats,[552] this splitting of hairs may be indicative of Ford's real sympathies, it would seem. It may also have been a Democratic attempt to vindicate him.

[548] *House Journal*, 1890, p. 481.
[549] *Ibid.*
[550] *Ibid.*, pp. 481-482; *The* (Weekly) *State Journal*, February 6, 1890.

Amidst anticipation the members of the joint session had passed through the portals of the assembly hall to their seats at ten o'clock on that historic Tuesday morning of February 4. Visitors were numberless. The hour of triumph and defeat had really come. During the preceding twenty-four hours, it was reported, the Democrats had readied themselves for the final voting. The Republicans, too, remained tense and hopeful.[553]

Immediately, after Harr's letter to Ford was read, after the report of the investigating committee was received, and after the investigating committee was discharged, Carr, presiding officer of the joint session, called the session to order. He announced that the substitute resolution declaring Goff elected was the first business for consideration.[554]

Price opposed the resolution's wording as being contrary to an accepted rule made by the committee on rules.[555] After assurances from Morris and the resolution's sponsor, Maxwell, that the resolve would be considered in the same manner as a prescribed resolution, Carr ordered the question. Without any further ado the voting began. Every Republican voted in the affirmative and every Democrat voted in the negative. A short time after the roll call was completed the clerk declared that the substitute resolution was lost by a vote of 40 to 43.[556]

When Senator John W. Arbuckle of Greenbrier County, rose to vote, he explained that the question was whether

[551] *House Journal*, 1890, p. 482; Wheeling *Register*, February 5, 1890.
[552] *House Journal*, 1890, pp. 480, 483, 484.
[553] Wheeling *Register*, February 5, 1890.
[554] *House Journal*, 1890, pp. 481-482; Wheeling *Register*, February 5, 1890.
[555] *House Journal*, 1890, p. 475; Wheeling *Register*, February 5, 1890.
[556] *House Journal*, 1890, p. 483; Wheeling *Register*, February 5, 1890.

Fleming or Goff received a majority of the legal votes cast. He did not believe the case was one of personal fraud against either man, but he understood that fraudulent votes had been cast and that they should be eliminated. With that in mind he was convinced that Fleming had received a plurality of votes. Moore claimed that both the majority and minority reports could be used to prove "everything and anything" in the case and, probably basing his views on the original *prima facie* returns and on his party affiliation, voted for Goff.[557]

Though his voting with the Democrats on the previous Saturday for the adjournment[558] signaled his position, Carr, the Laborite, who often seemed to possess a quintessence of political strategy, remained a matter of some speculation. He dispelled all doubts when he gave his support to the Fleming forces rejecting the substitute resolution.[559]

The original resolution declaring Fleming the duly elected governor recurred.[560] The voting was interspersed with a few voters' short speeches. After the roll was finally called the clerk tabulated the result. "As the hands of the Capitol clock pointed to the hour of twelve," February 4, 1890, precisely eleven months past inauguration time, the clerk announced that Fleming had been officially declared governor by a vote of 43-40. Carr declared the resolution adopted.[561] The votes of Carr and the two Democratic voters who were held in line, proved to be, for the Democrats, the victorious turning point in the contest.

After the applause, the joint session, upon the motion of the aged Senator Joseph Snider of Monongalia County, adjourned *sine die*. Thus ended the first judicial court of its kind in the history of West Virginia.[562]

[557] Wheeling *Register*, February 5, 1890.
[558] *House Journal*, 1890, p. 480.
[559] *Ibid.*, p. 483; *The* (Weekly) *State Journal*, February 6, 1890; Wheeling *Register*, February 5, 1890.
[560] *House Journal*, 1890, pp. 483-484; Wheeling *Register*, February 5, 1890.
[561] *House Journal*, 1890, p. 484; Ambler, *op. cit.*, p. 462; *Appletons'*, New Series, XV, p. 853; Callahan, *op. cit.*, pp. 245, 446.
[562] *House Journal*, 1890, p. 484; *The* (Weekly) *State Journal*, February 6, 1890; Wheeling *Register*, February 5, 1890.

Both Fleming and Goff were tactfully absent from the assembly hall when the result was declared. But at the Ruffner Hotel, Fleming was given an informal ovation by both Democrats and Republicans.[563] Congratulations were heaped upon him for several days.[564] Due to their success St. Clair and other Democratic leaders were fraught with generous phrases of well wishers.[565]

In the afternoon Fleming and some friends consulted with Governor Wilson who, because he no longer considered himself entitled to office, wished Fleming to assume "the duties as soon as possible."[566] In the evening, John M. Hamilton, clerk of the house, presented the governor-elect with a commission on which to base his claim to office, the first document of its kind in the state's history.[567]

As the last morning hour of February 6 approached high noon Fleming descended from his room in the Ruffner Hotel and was met by Governor Wilson, other state officers, and friends. With Wilson and Fleming in the lead they formed a procession and walked to the Capitol, escorted by Governor Wilson's guard.[568] Of this incident the Charleston *Gazette* wrote, "The march was begun, and thus in true Jeffersonian simplicity the Governor [Fleming] . . . walked to his inauguration."[569] A motley crowd milled about the Capitol steps as the party approached. Near the gate in a carriage were Mrs. Wilson and Mrs. Fleming.[570]

Besides Wilson and Fleming there were assembled on

[563] *Ibid.*, February 5, 1890.
[564] *Ibid.*, February 5, 1890; John E. Kenna and Charles J. Faulkner to Fleming, February 4, 1890; E. Boyd Faulkner to *id.*, February 4, 1890; J. A. Fickinger to *id.*, February 4, 1890; D. W. Gell to *id.*, February 4, 1890; John C. Pendleton to *id.*, February 4, 1890; Charles Powell to *id.*, February 4, 1890; T. F. Rowand to *id.*, February 4, 1890; Silas P. Smith to *id.*, February 4, 1890; Robert White to *id.*, February 4, 1890; Alexander Parks to *id.*, February 5, 1890; D. R. Paige to *id.*, February 5, 1890; C. J. Harrington to *id.*, February 5, 1890; Joseph Gallagher and Son to *id.*, February 5, 1890; L. T. Gray to *id.*, February 5, 1890; B. W. Price to *id.*, February 6, 1890; B. B. Wilson, to *id.*, February 6, 1890; John J. Jacob to *id.*, February 8, 1890, Fleming MSS.
[565] Wheeling *Register*, February 5, 1890.
[566] *The* (Weekly) *State Journal*, February 6, 1890; Wheeling *Register*, February 5, 1890.
[567] *Ibid.*, February 5, 1890.
[568] *The* (Fairmont) *Index*, February 14, 1890.
[569] The Charleston *Gazette* quoted in *The* (Fairmont) *Index*, February 14, 1890.
[570] *The* (Fairmont) *Index*, February 14, 1890.

the Capitol steps various state leaders. Among them were: Judges John W. English and Okey Johnson, state Democratic leader, Thomas S. Riley, Clerk of the Supreme Court Odell S. Long, Fleming's leading attorney St. Clair, and legislators Benjamin H. Oxley, Anthony D. Garden, Malcolm Johnson, and Alex R. Campbell.[571]

Riley called the assemblage to order. After a prayer, offered by the Rev. H. Wallace Torrence, Pastor of the Kanawha Presbyterian Church, Wilson introduced Fleming. The Governor-elect stepped forward[572] and gave a brief inaugural address. He lauded the state and looked forward to its future development, especially industrial, and hoped for pure and honest elections. He pointed out that the election contest was officially recorded, and that its testimony would remain against the perpetrators, who had schemed to corrupt the election, as long as the records of it were preserved. Of corrupt election practices he significantly stated, "The popular tendency to adopt the methods of the Quays and Dudleys for the achievement [*sic*] of party victory, is a menace to free institutions and free government that challenge the thoughtful attention and serious consideration of patriotic citizens of all parties."[573]

He proposed to do his duty as governor and in concluding his address he said, "I am ready to take the oath of office, and, 'with malice toward none and charity to all' enter upon the discharge of my duties." As he turned, Judge English "extended the well worn Bible [*sic*] on which so many solemn oaths . . . [had] been taken." Fleming reverently touched it and after English administered the oath of office, Aretus Brooks Fleming "bowed, and kissed the book . . . ."[574]

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571 *Ibid.*
572 *Ibid.*
573 Fleming's Inaugural Address. (MS), Fleming MSS.
574 *The* (Fairmont) *Index*, February 14, 1890.

Truthfully, the candidate who had been legally elected *by popular votes* on November 6, 1888 will never be known. Considering the *prima facie* election returns and the number of votes accredited to him by the minority report, Goff was elected. Likewise, deliberating upon the majority's computation of votes only Fleming could have been elected. The Democrats did not err in charging that illegal votes were cast, especially by non-residents. The evidence, if reasonably observed, exonerated the Republicans so far as systematic fraud was charged. Rather, the illegal votes seemed to have been cast by individual accord, the Republicans, perhaps, receiving more of them. Partisanship played its diabolical role throughout the contest. Except for giving the Democrats some information on which to base their claims, which they did not officially possess at the 1889 legislature, the work of the Joint Contest Committee was useless in deciding the election. The way to discover who was legally elected was not feasible, that was, to trace the conditions under which every vote was cast.