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. 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. 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.

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

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328 The Preston County Journal, February 28, 1889.
329 Ibid.
330 Ibid.
331 Ibid.; The Sentinel, February 10, 1889.
governorship under specified conditions when a seated or a
new candidate failed to qualify for the office.333

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 Com-
mittee had not been able to unravel the contested votes
within the two weeks following adjournment and preceding
inauguration day.334 More depositions of illegal votes
could be taken until March 10,335 the end of the forty days
allowed for such action after the serving of the counter
contest notice upon the original contestant.336 Feeling that
enough evidence could not be properly gathered within the
time to justify the contestants’ positions the legislators
extended the time limit for taking depositions until
May 10.337

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 con-
gregated 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 chal-
 lenged.338 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, six-
teen 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 Demo-

n 333 Constitution of 1870, Art. VII, Sec. 16.
 334 The Preston County Journal, January 31, 1889; The Sentinel, February 2, 1889.
 335 House Journal, 1889, p. 356.
 336 Code of 1887, Chap. VI, Sec. 13.
 338 The Preston County Journal, March 7, 1889; The Wheeling Intelligencer, March 9, 1889.
 339 MacCorkle, op. cit., 497.
 340 The Preston County Journal, March 7, 1889; The Wheeling Intelligencer, March 9, 1889.
 341 The Preston County Journal, March 7, 1889; The Wheeling Intelligencer, March 9, 1889.
 342 MacCorkle, op. cit., 497.
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. 

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. 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.

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. At the outset the Court conceded that Goff’s title, if proved, could demand a mandamus writ. According to the Court’s revivals 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. A declaration might have resulted in a non-elected person taking 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.

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 office, might have been intended to precede the contest. 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 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,” 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 . . . .” 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.”

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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. The Court was powerless to issue the mandatory writ because the assembly had not failed to use its discretionary power. 

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. 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. With this opinion it held that "declaration ... [was] the only constitutional evidence of ... [a candidate's] title to ... office." These matters were decided by the constitution's framers and by the people when they adopted the constitution. 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. 

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. Carr used Section 1 of the constitutional Article VII, "in 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." 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. 

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." 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. 

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. 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. 

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Footnotes:

1. West Virginia Archives and History

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1. Ibid., p. 402.
2. Ibid., p. 404.
3. Ibid.
4. Ibid., pp. 403, 404, 405; Constitution of 1872, Art. IV Sec. 11, Art. V, Sec. 1.
5. Art. V, Sec. 3; Code of 1887, Chap. 11, Sec. 22.
6. Ibid., p. 408.
8. Ibid.
The justice regarded the law stating the governor must be declared elected, and all other constitutional requirements as mandatory and indispensable.\textsuperscript{88} 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 been taken place as a qualifying factor, the old incumbent "held over."\textsuperscript{89} 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.\textsuperscript{90}

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.\textsuperscript{91} The weak spot in Carr's argument was again that he would have to replace 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.\textsuperscript{92} 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

\textsuperscript{88} Ibid., p. 426.
\textsuperscript{89} Ibid., p. 437.
\textsuperscript{90} Ibid., p. 429.
\textsuperscript{91} Ibid., p. 428.
\textsuperscript{92} Ibid., p. 429.
the change had the color of legality and that authorities’ actions could not deprive one of his voting right. 293

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. 295 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.” 296

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
the settling of the gubernatorial contest, 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. 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. The Democrats who had apprehensions realized the extremely close partisan alignment between Fleming and Goff men in the joint session.

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. 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. 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.

While the committee on rules was convening, Hubbard approached it and suggested that Fleming be invited to argue his case. 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. 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.

Consequently, among the rules presented to the joint session, there was one which permitted either the contestant and/or the contestant to appear within the time allowed for each counsel's argument. 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. Goff and his counsel sat near the bench, and when Hubbard finished the contestant'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.

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. Sprigg spoke for the majority, and Maxwell and Morris divided the minority time between themselves and addressed the assembly. Under the accepted rules, committee members

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844 House Journal, 1890, pp. 4, 10.
845 Ibid., pp. 82-84.
846 The (Weekly) State Journal, January 16, 1890.
847 The (Weekly) State Journal, February 5, 1890.
848 Ibid., 1890, p. 409.
849 Ibid., pp. 490-491.
850 Ibid., pp. 471-474. The (Weekly) State Journal, January 24, 1890; Wheeling Register, January 25, 1890.
851 Ibid., January 20, 1890.
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.\textsuperscript{118}

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.\textsuperscript{120}

Democratic arguments decried their position and their right to protect themselves from being fraudulently deprived of the state's most influential office. Republicans decried the 46-43 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.\textsuperscript{120}

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

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\textsuperscript{118} Ibid., pp. 471-474, 476-477; The (Weekly) State Journal, January 20, and February 1, 1889; Wheeling Register, January 30, and February 3, 1889.

\textsuperscript{119} The (Weekly) State Journal, January 25, and 30, 1890; The (Weekly) State Journal Supplement, January 25, 1889; Wheeling Register, January 24, 25, and 29, 1890; Wheeling Register, January 21, and 25, 1890.

\textsuperscript{120} Ibid.

\textsuperscript{121} The (Weekly) State Journal, January 25 and 30, 1890; Wheeling Register, January 24, 1890.

\textsuperscript{122} The (Weekly) State Journal, January 30, 1890; Wheeling Register, January 25, 1890; Wheeling Sunday Register, January 23, 1890.

\textsuperscript{123} 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.

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. William A. MacCorkle in his Recollections of Fifty Years, tells us that two necessary votes were unpredictable. 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.

Nevertheless, 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. 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.

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

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."

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.

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-
kle's office and asked him to overlook his personal feelings for the sake of his political tradition and because the Democ-

rat's vote was narrowed down to two persons. One, he said, could be influenced only by MacCorkle.252

Walker explained that it was understood that Senator Azel Ford of Raleigh County was not satisfied with the ma-

jority testimony and intended to support Goff. He said Ford was interested with a J. C. Bullet, a Democrat in Phila-

delphia, "in some very large interests" of the Nor-

tfolk and Western Railroad. It was believed that Bullet could influence Ford. MacCorkle left immediately to see

his old college mate, Josh C. Bullet.253

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

tically dismissed the conversation, when Mrs. Bullet inter-

vened.254

MacCorkle was encouraged, when Mrs. Bullet 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 Bullet 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.255 Immediately after Harr's charges and the partisan discussion re-

lating 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

Bullert and his wife walked over to Ford, amidst the in-

tense 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 Bullert to convince Ford of a need of voting for Fleming.256

Since partisanship was paramount on both sides, Flem-

ing 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.257

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.258

At the investigation, in the room of the senate com-

mittee on the judiciary, held privately against Hubbard's wish, those concerned appeared. Stollings was accom-

panied 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
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.\footnote{Ibid.}

After a Sunday of high speculation on political matters in Charleston, 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.\footnote{Ibid.}

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 Axel 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.\footnote{Ibid.} It was learned in Harr's testimony that his cousin at this point had returned to the Ruffner Hotel.\footnote{Ibid.}

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."\footnote{Ibid.} Harr had testified that on that morning Stollings, in the assembly hall, said he had the money in his pocket.\footnote{Ibid.} 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 further suggested that Harr have a paper containing the facts made out by St. Clair for presentation to the joint assembly.

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.\footnote{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.644

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.645 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 . . . .”646

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 induce-
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.587

Though his voting with the Democrats on the previous Saturday for the adjournment588 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.589

The original resolution declaring Fleming the duly elected governor recurred.590 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.591 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.592

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.593 Congratulations were heaped upon him for several days.594 Due to their success St. Clair and other Democratic leaders were fraught with generous phrases of well wishes.595

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.”596 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.

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.597 Of this incident the Charleston Gazette wrote, “The march was begun, and thus in true Jeffersonian simplicity the Governor [Fleming] ... walked to his inauguration.”598 A motley crowd milled about the Capitol steps as the party approached. Near the gate in a carriage were Mrs. Wilson and Mrs. Fleming.599

Besides Wilson and Fleming there were assembled on

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587 House Journal, February 3, 1890.
588 Ibid., February 5, 1890; John R. Keas and Charles J. Fainliser to Fleming, February 4, 1890; E. Ford Fitsher to id., February 4, 1890; J. A. Ficklin to id., February 4, 1890; D. W. Bell to id., February 4, 1890; John C. Clendenin to id., February 4, 1890; Charles Powell to id., February 4, 1890; W. J. Sproule to id., February 4, 1890; Charles F. Smith to id., February 4, 1890; T. F. Sproule to id., February 4, 1890; J. T. Crim to id., February 4, 1890; R. W. Smith to id., February 4, 1890; T. F. Sproule to id., February 4, 1890; J. A. Ficklin to id., February 4, 1890; D. R. Paige to id., February 5, 1890; J. R. Harrington to id., February 5, 1890; Joseph Gallager to id., February 5, 1890; L. T. Gray to id., February 5, 1890; J. W. Price to id., February 5, 1890; B. H. Wilson to id., February 6, 1890; John J. Jacob to id., February 6, 1890; Fleming MSS.
589 House Journal, February 5, 1890; Wheeling Register, February 6, 1890.
590 Ibid., February 5, 1890.
591 The (Fairmont) Index, February 14, 1890.
592 The Charleston Gazette quoted in 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. 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 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." 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 ... "

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 each vote was cast.