

No. 8420

Supreme Court of Illinois

People

vs.

Richard Yates

71641  7

G. Richard Yates Governor of
the State of Illinois

Sir: You will take
notice that a motion will be made
by the Relator in the foregoing Petition
in the Supreme Court of the State
of Illinois to be holden at Mtlher-
ron on the first Tuesday after the
second Monday of November
A.D. 1863 for the first Grand Division
on the opening of Court or as
soon thereafter as counsel can be
heard, for an alternative writ
of mandamus according to the
prayer of said Relator.

October 12. 1863.

W. C. Gandy

Attorney for Relator

State of Illinois / On this 6th day of
Sangamon County, ^{November} ~~October~~ A.D. 1863, be-
fore the undersigned William A. Turner, Clerk of the Court
in and for said ~~County~~ State, came C. M.
Morrison who being sworn says that
he served the foregoing Petition and
the notice thereto affixed by the de-
livery of a true copy thereof to Richard
Yates Governor of the State of Illinois on the
day & year aforesaid, C. M. Morrison

Nov- Term Supreme Court A. S. 1863.

The People of the State of
Ill. Ex. Rel. Thomas Harless.

vs

Richard Yates - Governor &
Francis A. Hoffmann - Secy,
Governor of the State of Ill.

Pet. for mandamus -
Motion Denied &

Cause Dismissed - do

Court of Relations

1863- To filing Pet. do 20- Statutory Cause 12

.32

" issuing writ & copy do 7200 Mills

36.50

" filing papers & Sub. M. & O. do

2.50

" Court bill & Sub. Same & Postage

67

" Docket fee

6.00

\$ 45.99

Prepaid on file of Pet. \$11.00-

30

People enrolled

Charles

W.

Gov. Yates &c

Cost. bill - \$45-99

Gov. \$11-00

~~1867~~

1868

Filed Nov. 10. 1863.
N. Schuster Clerk

To the Supreme Court of the State of Illinois.

The People of the State of Illinois, upon the relation of Thomas Harless, of the County of Cook, give the Honorable the Judges of the Supreme Court of the State of Illinois to understand and be informed, that the Twenty-third General Assembly of the State of Illinois, at a regular session begun on the first Monday of January, A. D. 1863, passed, in the manner and according to the forms prescribed by the Constitution of the State of Illinois, to-wit: the Senate on the 22d day of January, and the House of Representatives, on the 8th day of June in said year, "a bill for an act to incorporate the Wabash Railway Company," which declared the Relator, Horace A. Hurlburt and Charles Hitchcock, and all such persons as should thereafter become stockholders in the company thereby created, a body corporate, by the name and style of The Wabash Railway Company, with the usual powers of corporations, and with authority to construct and operate a railway for the transportation of persons and their ordinary baggage, in certain streets in the city of Chicago, and which it was declared should be in force from and after its passage, and that said bill was enrolled, signed by the Secretary of the Senate, in which branch of the General Assembly it originated, and by the Speaker of the House of Representatives, and the following entry made by the Speaker of the Senate, to wit: "I sign the within bill with this statement: The same was passed, in my opinion, under a misapprehension on the part of Senators, arising out of the statement made by the Senator introducing the same, previous to the passage of the same," and then signed also by the Speaker of the Senate, and the said enrolled bill so certified, was, on the 12th day of June, A. D. 1863, pre-

sented to the Governor, for the purpose and in the manner required by Section twenty-one of Article four of the Constitution, which said bill so presented to the Governor, was not and has not been approved by him. And the said Governor has not at any time returned the said bill, with his objections to the Senate, the House in which it originated, unless the facts hereinafter set forth constitute such a return. And more than ten days (Sundays excepted) have elapsed since the same was so presented to him; and the General Assembly did not by their adjournment prevent the return of said bill within ten days (Sundays excepted) after it was presented to him, unless the facts hereinafter set forth constitute such adjournment, within the meaning of the Constitution.

The people aforesaid, upon the relation of said Thomas Harless, give the Honorable the Judges of the Supreme Court further to understand and be informed, that, on the second day of June, A. D. 1863, while both branches of the General Assembly were in session, Mr. Bushnell, the Senator from La Salle, introduced in the Senate a joint resolution that the General Assembly adjourn *sine die*, on the 10th day of June, 1863, which was laid over under rule 43 of the Senate, that, "All resolutions presented to the Senate shall lie one day on the table, unless otherwise ordered," and no further action was taken thereon, until in the forenoon of June 8th, 1863, when the resolution was called up, and after being amended so as to read "*Resolved*, by the Senate, the House of Representatives concurring therein, That this General Assembly will adjourn *sine die*, on the 8th inst., at six o'clock P. M.," it was passed by the Senate and a message of such action was delivered by the Secretary of the Senate to the House of Representatives, during their forenoon session of that day. The House of Representatives adjourned until two o'clock P. M., and immediately after the House was called to order, at the said hour of two o'clock, the said message from the Senate was taken up, and upon consideration of the resolution, the same was amended by striking out "8th," and inserting in lieu thereof "22d," and striking out "6 o'clock, P. M.," and inserting "10 o'clock A. M.," and then passed by the House of Representatives as amended, which action

was immediately, on the assembling of the Senate, at 3 o'clock P. M., reported by message to the Senate, and as soon as the message was delivered, the Senate took up the same and the question being, shall the Senate concur in the amendment of the House, the vote was taken by yeas and nays, when the question was decided in the negative, as follows, to wit:

Yeas:—Berry, Blanchard, Gregg, Green, Knapp, Lindsey, Mason, Moffett, Ogden, Vanderveer, and Worcester.—11.

Nays:—Addams, Allen, Bushnell, Dummer, Funk, Lansing, Mack, Peters, Pickett, Richards, Schofield, and Ward—12;

And during the afternoon session on the said 8th day of June, the House of Representatives passed the following resolution, to wit:

“*Whereas*, The House desires to recede from its action taken this day, in amending and adopting the Senate resolution in relation to adjournment, therefore,

“*Resolved*, That the Honorable Senate is hereby requested to return said resolution as amended, to the House, for re-consideration,” and the House notified the Senate of the passage thereof by a message delivered by the Clerk of the House immediately after (and before any intervening business had occurred) the vote of the Senate to non-concur in the amendment of the House, and after the delivery of such message, there were no other proceedings in either branch of the General Assembly, or messages sent or delivered, on the question of an adjournment *sine die*, on that or any other subsequent day; nor had there been any before that day, and at the hour of four o'clock P. M. of June 8th aforesaid, the Senate adjourned until 10 o'clock, the next morning. The House adjourned at 5 o'clock P. M., until 7 o'clock P. M., when it again convened and adjourned at 9 o'clock 35 minutes P. M., until 9 o'clock June 10th, in pursuance of a prior resolution.

The people aforesaid, upon the relation of the said Thomas Harless, give the Honorable the Judges of the Supreme Court further to understand and be informed, that the Senate, in pursuance of adjournment, met at ten o'clock A. M., the 9th day of June, and

proceeded as usual with business: and after the reading of the journal, Senator Knapp reported from the committee on township organization, a bill in relation to a bridge across Salt Creek, which was ordered to a third reading. Several messages were received from the House of Representatives. Senator Green moved to refer the bill for an act in relation to claims allowed by the army board, to the committee on public accounts and expenditures, which was agreed to; when Senator Mack moved to adjourn until ten o'clock next morning, on which the yeas and nays were demanded, when 2 voted aye, and 14 nay. Senator Blanchard moved a call of the house, when 16 Senators answered, and the Sergeant-at-arms was instructed to bring in absent members, and on motion of Senator Green, the Senate adjourned until 3 o'clock P. M., at which hour the Senate met pursuant to adjournment, and on motion of Senator Mason adjourned until 10 o'clock next morning. That the Senate met pursuant to adjournment, at 10 o'clock June 10th, when the journal was read and approved, and the Senate proceeded with their usual business, in the course of which, bills were reported from several of the standing committees, and ordered to a third reading, and reports made by the committee on engrossed and enrolled bills, after which the Speaker of the Senate read the following communication, to wit:

“STATE OF ILLINOIS, EXECUTIVE DEPARTMENT.

“TO THE GENERAL ASSEMBLY OF THE STATE OF ILLINOIS:

“Whereas, On the 8th day of June, A. D. 1863, the Senate adopted a joint resolution to adjourn *sine die* on said day at six o'clock P. M., which resolution, upon being submitted to the House of Representatives on the same day, was by them amended by substituting the 22d day of June and the hour of 10 o'clock A. M., which amendment the Senate thereupon refused to concur in;

Whereas, The Constitution of this State contains the following provision, to wit:

“‘SEC. 13, ART. IV. In case of disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he

thinks proper, provided it be not a period beyond the next constitutional meeting of the same.'

"Whereas, I fully believe that the interests of the State will be best subserved by a speedy adjournment, the past history of the present Assembly holding out no reasonable hope of beneficent results to the citizens of the State, or the army in the field, from its further continuance;

"Now, therefore, In view of the existing disagreement between the two houses in respect to the time of adjournment, and by virtue of the power vested in me by the Constitution aforesaid, I, Richard Yates, Governor of the State of Illinois, do hereby adjourn the General Assembly now in session, to the Saturday next preceding the first Monday in January, A. D. 1865.

"Given at Springfield, this 10th day of June, A. D. 1863.

(Signed)

"RICHARD YATES, Governor."

And after reading the same vacated the chair. And on motion of Senator Berry, Mr. Underwood, the Senator from St. Clair was elected Speaker *pro tem.*, and on a call of the Senate, twelve Senators were found to be in attendance, when the Sergeant-at-arms was directed to bring in absent members, and afterwards the proceedings under the call were dispensed with, and a message received from the House, that it had appointed their part of a committee of conference on the bill for the relief of sick and wounded soldiers, and asking the Senate to concur, and appoint their part of said committee, and the Senate concurred in said resolution and appointed their part of said committee. A message was received from the House that they had passed a resolve that a joint committee be appointed to prepare an address to the people of the State, with the reasons why the members of the Legislature were not engaged in transacting the legitimate business for which they were elected, and had appointed their part of the committee, which resolution was taken up, concurred in, and the committee on the part of the Senate appointed, and then the Senate adjourned until 3 o'clock P. M., at which hour it met pursuant to adjournment, and on call of the Senate thirteen Senators answered; when Senator Green, from the joint committee of conference on the bill for the relief of sick and wounded soldiers, reported that the committee had agreed to recommend

that the House concur in the amendments of the Senate. A message was then received from the House, on the passage of a joint resolution, which was concurred in by the Senate, and then another message was received that they had adopted a protest and ordered it spread upon the journal, and asked the concurrence of the Senate in the same; and on motion of Mr. Green, the protest was taken up, adopted, and ordered to be entered on the journal of the Senate, and said protest was signed by thirteen Senators and fifty-six Representatives, and reads as follows, to wit:

THE PROTEST OF THE DEMOCRATIC MEMBERS OF OUR LEGISLATURE.

Upon this 10th day of June, A. D. 1863, while the General Assembly were in session and engaged in the discharge of their constitutional duties, an attempt by the Governor of Illinois was made to dissolve this body; which attempt, illegal, unconstitutional, and outrageous as it is, must inevitably result in the cessation of any further legislation at this time.

The circumstances attending this monstrous and revolutionary usurpation of power, and the injurious consequences which must result to the people of the State, demand a brief statement on our part which we submit with confidence to the consideration of a discerning and candid public, whose rights have thus been ruthlessly invaded, and whose interests have been disregarded and trampled under foot.

The action of the Governor in this nefarious attempt to stop the legislation of the State is supposed to be based upon the following provision of the State constitution.

“ART. IV—SEC. 13. In case of disagreement between the two houses with regard to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he thinks proper, provided it be not to a period beyond the next constitutional meeting of the same.”

And the first question to be determined is, what is such a disagreement under the constitution as would justify the interposition of the Executive? Nor is the answer difficult to arrive at, since this point has been so well and thoroughly settled that it needs but its statement to determine the inquiry beyond cavil or contradiction. When one house amends the resolution or alters legislative action of the other, as to the time of adjournment or any other subject, and the house proposing the resolution or action refuses to concur with the amendments so made, the amending house must be first informed of such non-concurrence, in order to recede and concur or take such other action in the premises as may tend to an agreement of both on the basis of compromise.

The amending house, being informed of non-concurrence in its action by the other, may either itself recede and concur, or adhere, and propose and appoint a committee of conference, which is the next step to be taken. And it is only when one house refuses to join in a committee of conference, or when such committee, having been appointed, fails to arrive at a common result, or, having so done, the same is not agreed on and adopted by both houses, that the disagreement spoken of in the constitution has been produced; and the usual parliamentary proceeding is to have two free conferences before final disagreement results. Both houses must be at a dead lock, without hope of or effort towards agreement, before Executive action can be invoked or legally taken. Were the rule otherwise, it would require the invariable agreement of each house to whatever the other chose to propose. And until this time it has never been questioned in Europe or this country that such was the rule.

Nor can the Executive take action, even where an actual disagreement exists, until officially informed thereof by both houses.

Tested by these principles, we present the facts in the present case, which will demonstrate the indefensible character of the proceeding which we reprobate and condemn.

"Resolved by the Senate, the House of Representatives concurring therein, That this General Assembly will adjourn sine die on the 8th inst., at 6 o'clock P. M."

Which resolution was at once transmitted to the House, and, being taken up by that branch of the Legislature, was amended by the substitution of the 22d day of June instead of the 8th.

The resolution, being thus amended, was returned to the Senate for its action, whereupon that body refused to concur in the amendment.

The House was not then, and has not since been, officially informed of the non-concurrence of the Senate in the amendment in question, and no opportunity has as yet been afforded that body to recede from its previous action, if it so desired.

The regular parliamentary progression has not been observed; the House has not refused to recede and concur with the Senate in its action; no committees of conference have been proposed or appointed; and, in short, no disagreement has existed, or can be presumed as existing, in the premises.

Neither has the legal and official notification of a disagreement been laid before the Governor, as, indeed, it could not have been, since it was well known and understood that there was no such disagreement in fact.

We have thus briefly stated the position of affairs which the Governor of the great State of Illinois has made use of as a pretext for an arbitrary, illegal attempt to bring the deliberations of the General Assembly to a close.

By this action he has deliberately and designedly defeated the passage of measures of great public importance, and demanded by the exigencies of the times.

He has defeated the appropriation of one hundred thousand dollars for the gallant sons of Illinois who are bleeding and dying upon the battle-field and in the hospital, and whose terrible condition invites the sympathy of every human heart, and demands the earnest effort in their behalf of every citizen of the State on which they have shed imperishable glory. The bill for that purpose, already passed both houses, and pending simply upon a slight difference of opinion as to some of its details, in the lower house, which difference has now been happily removed, is defeated merely because the miserable partisanship of the Chief Executive, who

usurps the unmerited title of the "Soldier's Friend," prevented him from consenting that a legislature having a majority of his political opponents should have the honor, as they would enjoy the privilege, of flying to the rescue of their gallant brethren.

He has defeated the bill for the sale of the coin in the treasury and the payment of our interest in treasury notes, saving hundreds of thousands to the people, which was on its final passage as the supporters of this action left the halls of legislation at the bidding of their master.

He has defeated the passage of the general appropriation bills already passed the Senate, and pending in the House and ready for passage, which the Senate had acted on without delay, and to which no obstruction was intended to be, would or could have been, interposed by the House.

He has defeated the printing of the report of the State Agricultural Society, an appropriation for which passed the House and was on its passage in the Senate, and the distribution of the appropriation for agricultural purposes made by the general government, and as yet unapplied to the ends for which it was intended, to the great detriment of the vast agricultural interests of Illinois, for whose benefit the measures were intended.

He has defeated the appropriation for the State Normal University, and the property will be sold under the existing judgments, and this noble institution be destroyed.

The memory of the great dead could not restrain him, and the appropriation for the erection of a monument to Douglas receives its death blow at his hands.

He has defeated the general and local legislation of the State, for much of which pressing necessity existed, and which was so fully matured as to require for its completion but slight farther action.

He has done all this without the shadow of a legal pretext, and in defiance of a well nigh universal public opinion.

Even partisanship affords no palliation for the pursuit of such a course, since no political measure has been pressed upon either branch of the Assembly during the recent period of its session.

Which is the more guilty, the individual who proposes, or the wretched agents who carry into effect, an act so utterly indefensible, it is not for us to determine. It is sufficient that all the actors, aiders and abettors of this scheme to block the wheels of government will receive the condemnation they deserve from an outraged people.

The manner in which this action was attempted to be taken deserves a passing notice. The statement by one branch of the government to a co-ordinate branch thereof, that its action has not been conducive to the public welfare, is disrespectful in terms, and an insult so obvious that we dismiss it with the remark that, if such insinuations could be permitted or were justifiable in any event, they come with an ill grace from the source of the delays to legislation during the former part of this session, and the entire cessation thereof at the present.

When it is considered that the Governor has been absent from his post of duty during the present portion of our session until within the last twenty-four hours, and that members of his political party, (who render to his commands the most abject obedience) repeatedly seceded from the Senate during the winter session, and have given a quorum of but two days and one-half during the summer continuation thereof, the suggestion that the General Assembly have failed in the performance of their duties deserves only our contempt.

Earnestly protesting against this arbitrary and illegal act of the Governor, and insisting that the General Assembly has still a legal existence, and has neither been adjourned nor constitutionally dissolved, we ask that this, our protest, may be entered on the journals of the respective houses.

SENATORS.

William Berry,
Israel Blanchard,
William H. Green,
Hugh Gregg,
Colby Knapp,
John T. Lindsay,
Albert C. Mason,

Samuel Moffat,
W. A. J. Sparks,
Bryant T. Scofield,
William H. Underwood,
Horatio M. Vandever,
Linus E. Worcester.

REPRESENTATIVES.

M. W. Fuller,	S. W. Miles,
A. G. Burr,	E. W. Menard,
James B. Turner,	M. Brand,
Chas. A. Keyes,	T. B. Hicks,
C. A. Walker,	W. W. O'Brien,
Ambrose M. Miller,	Samuel A. Buckmaster,
D. W. Odell,	John Gerard,
S. P. Shope,	T. C. Gibson,
A. E. Wheat,	Jefferson A. Davis,
Lyman Lacey,	Wm. J. Brown,
C. F. Coffeen,	George Dent,
Wm P. Witt,	L. G. Reid,
James M. Sharp,	J. N. English,
P. Dougherty,	Elias Wenger,
Chas. E. Boyer,	James Holgate,
John Kistler,	James M. Epler,
M. B. Patty,	Henry M. Williams,
John O. Dent,	Jas. M. Washburn,
H. K. Peffer,	James H. Smith,
John T. Springer,	Jesse R. Ford,
William Watkins,	John W. Wescott,
Scott Wike.	C. S. Conger,
John W. Merritt,	Perry A. Armstrong,
Reuben Roessler,	John G. Graham,
John Monroe,	James M. Heard,
John Ten Broek,	Milton M. Morrill,
J. S. Busey,	Joseph Sharon,
Thomas B. Cabeen,	R. H. Cann.

And thereupon the Senate adjourned until 9 o'clock the next morning when it met pursuant to adjournment.

The people aforesaid, upon the petition of the said Thomas Harless, further give the Honorable the Judges of the Supreme Court to understand and be informed, that on the morning of June 10th, the House of Representatives met pursuant to adjournment and proceeded with its usual business, during the course of which

a resolution for a committee of conference upon the bill for the relief of sick and wounded soldiers was adopted; a communication from the Governor in relation to the discharge of soldiers from the Marine Artillery was laid before the House, bills passed, bills introduced and referred, after which a bill for an act to provide for the payment of the interest upon the State debt, and for the sale of certain gold and silver coin, belonging to the State of Illinois, was taken up, when Mr. Lacy, of Mason, moved an amendment, pending which a message from the Governor was announced, in regard to which the following is the only entry in the journal: "A message from the Governor was announced by the doorkeeper and read, but the bearer of the message was not recognized by the Speaker," and thereupon motions were made to adjourn, and withdrawn, when a call of the house was made, and forty-four answering, further proceedings under the call were dispensed with, and a joint resolution passed for the appointment of a committee to prepare an address to the people, on the subject of the Governor's attempt to adjourn the General Assembly, and then a message was received from the Senate that they had concurred in the resolution for a committee of conference on the bill for the relief of sick and wounded soldiers, when the House adjourned until 2 o'clock P. M., at which hour the House met pursuant to adjournment, and the committee of conference on the bill for the relief of sick and wounded soldiers, reported a recommendation that the House concur with the amendments of the Senate, which was adopted; then a message was received from the Senate of concurrence in a resolution of the House, then a resolution was moved by Mr. Keyes, of Sangamon, and adopted, and thereupon the bill for the relief of sick and wounded soldiers was taken up, and on the question, shall the House concur with the Senate in its amendments, the yeas and nays were taken, when it appearing that 44 voted yea and none nay, which being less than a quorum, the bill failed for the want of a quorum; and then the protest hereinafter set forth, signed by thirteen Senators and fifty-six Representatives as aforesaid, was submitted to the House and ordered to be spread upon the journal, which was done.

The people aforesaid, upon the relation of the said Thomas Harless, gives the Honorable the Judges of the Supreme Court further to understand and be informed that the journals of both branches of the General Assembly are silent as to any proceedings in either branch after the morning of the 11th day of June, as before recited, until the afternoon of June 23d, 1863, when at the hour of 3 o'clock P. M., the following entry appears on the journal of the Senate: "The Speaker *pro-tempore*, Mr. Underwood, having retired from the chair, on motion of Mr. Lindsay, the Senator from Peoria, Mr. Knapp, the Senator from Logan, was elected Speaker *pro-tempore*, and thereupon took the chair," when on motion, the senate adjourned to 9 o'clock the next morning, at which time the Senate met pursuant to adjournment, when the journals were read and approved, when a message was received from the House of Representatives that they had passed the following resolution, to-wit:

"*Resolved* by the House of Representatives, the Senate concurring therein, that the two houses of the General Assembly, at 10 o'clock A. M. this day take a recess until the Tuesday after the first Monday of January, A. D. 1864, at 10 o'clock A. M.," which was concurred in by the Senate, and then other resolutions were passed by the Senate, and among them the following, to-wit:

"*Resolved* by the Senate, the House of Representatives concurring herein, that a joint committee of one on the part of the Senate and two on the part of the House of Representatives, be appointed to wait on the Governor and inform him that the General Assembly is now ready to adjourn for the recess, and ask him if he has any further communication to lay before them." And Senator Lindsay was appointed a member of said committee on the part of the Senate, and immediately thereafter the Senate received a message from the House of Representatives that they had concurred in the passage of the same resolution, and appointed Messrs. Fuller and Keyes as their part of said committee, and thereafter Senator Lindsay reported that the joint committee had waited on the Governor in obedience to the joint resolution, and that the committee were informed by his Excellency that he had no communications to lay be-

Governor of the bill to incorporate the Wabash Railway Company, and that no other facts touching the question of adjournment *sine die* appear on the journals of the proceedings of the 8th day of June, or prior thereto, at the June meeting, and no other proceedings on the days subsequent to the said 8th day of June than are hereinbefore recited, appear on the journals of the proceedings of said General Assembly. And further, that the journals of the proceedings of the 23d and 24th days of June, do not show how many Senators or Representatives were present. And further, that the record of the executive acts, as kept by his private secretary, and deposited in the office of the Secretary of State, shows that "the Bill for an Act to incorporate the Wabash Railway," was presented to the Governor for his approval, with other bills passed at the same session, which have been approved, but said record is silent in regard to the disposition of said bill; and further, that the said executive record shows no entry in regard to the adjournment of the General Assembly by the Governor, or otherwise.

The people aforesaid upon the relation of Thomas Harless, protesting and insisting that the facts as before recited, as being evidenced by the journals of the 23d General Assembly, are exclusive and conclusive evidence, and that no inquiry can be made as to the proceedings of the General Assembly, except in and through its journals, yet for the purpose of presenting all the facts touching the subject matter of this information, whether the same be proper for the consideration of a court or not, and giving the defendants all the benefit therefrom that the law will allow, but still protesting that the relator and his associates are not and cannot be, by the rules of law bound by such facts, appearing otherwise than from the journals, gives the Honorable the Judges of the Supreme Court further to understand and be informed, that, on the said 10th day of June at 11 o'clock in the forenoon, while the House was considering the Senate bill to authorize the Treasurer to sell the coin in the State Treasury, &c., the private Secretary of the Governor appeared on the floor of that body, and being announced by the door keeper, without addressing the Speaker, or being recognized by him, commenced to read the proclamation of the Governor, purporting to

adjourn the General Assembly. The Speaker rapped continuously with his gavel, until the Secretary was about half through, when the Secretary persisting in reading, the House and Speaker were silent, until he had concluded. The Speaker then stated to the House, the Secretary being on the floor, that the message was not received by the House, because it was disrespectful in terms, and the Secretary had attempted to deliver it without addressing the presiding officer or being recognized by him, and was not delivered to the House through the Speaker as established by legislative custom. No action was taken on the matter of receiving the message, and it was not entered on or made a part of the journals; but the paper was carried by a page to the Clerk's desk, while the Speaker was announcing that it was not received.

After the reading of the Governor's proclamation, all the republican members of both branches left their seats and refused to return, after being summoned, thus leaving but 13 Senators and 56 Representatives, less than a quorum in both houses, at that time, and a quorum was not obtained thereafter. On the evening of that day, the members of both houses left their seats, and did not resume business until June 23d.

The Lieutenant Governor remained in Springfield until the 12th of June, but refused to recognize the Senate as in session after he had vacated the chair. On the 12th of June he left Springfield, and thereafter was at his home, in Du Page county, and at Chicago, attending to his private business, until after the 24th of June.

On the 19th of June, the Governor prepared a message with his objections to the bill to incorporate the Wabash Railway Company, and sent the enrolled act with his original message by private hands to the Lieutenant Governor.

The Lieutenant Governor resides in Du Page county, about 200 miles from Springfield. The messenger went from Springfield to the residence of the Lieutenant Governor, in Du Page county, and on the 20th day of June, delivered the Bill with the veto message to the Lieutenant Governor, who was then at his residence engaged in domestic duties.

The Lieutenant Governor retains the act and message, and has not delivered it to the Secretary of the Senate, or laid it before the Senate, or in any way treated the legislature as in session, but denied and denies that it was.

On the 19th and 20th June, there was no actual session of the Senate, and the chamber was locked, but the Secretary was in Springfield and had possession of the journals and papers of the Senate.

On the 23d and 24th days of June there was less than a quorum present in each branch, all of which facts last recited can only be shown by parol evidence, and the relator again denies that said facts, known to exist only by parol evidence outside the journals are, or can be available in the law so as to be considered by a court, but as such question of law, submits the same to the Court.

The people aforesaid, upon the relation of the said Thomas Harless, further give the Honorable the Judges of the Supreme Court to understand and be informed that afterward, to-wit: on the 25th day of June, A. D. 1863, the corporators named in said act to incorporate the Wabash Railway Company, accepted the same and opened books for the subscription of the Capital Stock which was then and there subscribed, and the Company fully organized by the election of the relator as President, Charles H. Ham as Secretary, and Benjamin E. Gallup as Treasurer, and it is necessary for the said corporation to have and procure a certified copy of the said Act from the Secretary of State, to be used as evidence of the contents thereof, and yet the Secretary of State cannot furnish the same because the enrolled Act is not in his custody or control, and has never been deposited by the Governor or Lieutenant Governor, or any other officer or person in said office, but on the contrary, is now, and has been since the 20th day of June last, in the hands of Francis A. Hoffman, the Lieutenant Governor of the State of Illinois, where it was placed, as before alleged, by Richard Yates, the Governor of said State.

And the people aforesaid upon the relation of said Thomas Harless aver that the foregoing is a full, complete, and true statement of all the facts touching the passage of the "Act to incorpor-

ate the Wabash Railway Company," and the action of the Governor thereon, and the proceedings in and by the General Assembly subsequent to the 8th day of June, A. D. 1863.

Wherefore the people aforesaid, by the said Thomas Harless, relator as aforesaid, pray that an alternative writ may be issued to Richard Yates, Governor, and Francis A. Hoffman, Lieu't Governor of the State of Illinois, commanding them to return said writ by a day named therein, with the causes why they fail and neglect to deposit the Act to incorporate the Wabash Railway Company in the office of the Secretary of State, and that such order may be made in the premises, upon a hearing, as to your Honors may seem meet, &c.

H. C. Lundy
atty for Relator

The People of the State of
Missouri Et. Rel. of
Thomas Harless

vs

Richard Yates Governor &
Francis A. Hoffman an
Lieut Governor of the
State of Missouri.

Petition for Alternative
Writ of Mandamus.

To the Supreme Court of the State of Illinois.

The People of the State of Illinois, upon the relation of Thomas Harless, of the County of Cook, give the Honorable the Judges of the Supreme Court of the State of Illinois to understand and be informed, that the Twenty-third General Assembly of the State of Illinois, at a regular session begun on the first Monday of January, A. D. 1863, passed, in the manner and according to the forms prescribed by the Constitution of the State of Illinois, to-wit: the Senate on the 22d day of January, and the House of Representatives, on the 8th day of June in said year, "a bill for an act to incorporate the Wabash Railway Company," which declared the Relator, Horace A. Hurlburt and Charles Hitchcock, and all such persons as should thereafter become stockholders in the company thereby created, a body corporate, by the name and style of The Wabash Railway Company, with the usual powers of corporations, and with authority to construct and operate a railway for the transportation of persons and their ordinary baggage, in certain streets in the city of Chicago, and which it was declared should be in force from and after its passage, and that said bill was enrolled, signed by the Secretary of the Senate, in which branch of the General Assembly it originated, and by the Speaker of the House of Representatives, and the following entry made by the Speaker of the Senate, to wit: "I sign the within bill with this statement: The same was passed, in my opinion, under a misapprehension on the part of Senators, arising out of the statement made by the Senator introducing the same, previous to the passage of the same," and then signed also by the Speaker of the Senate, and the said enrolled bill so certified, was, on the 12th day of June, A. D. 1863, pre-

sented to the Governor, for the purpose and in the manner required by Section twenty-one of Article four of the Constitution, which said bill so presented to the Governor, was not and has not been approved by him. And the said Governor has not at any time returned the said bill, with his objections to the Senate, the House in which it originated, unless the facts hereinafter set forth constitute such a return. And more than ten days (Sundays excepted) have elapsed since the same was so presented to him; and the General Assembly did not by their adjournment prevent the return of said bill within ten days (Sundays excepted) after it was presented to him, unless the facts hereinafter set forth constitute such adjournment, within the meaning of the Constitution.

The people aforesaid, upon the relation of said Thomas Harless, give the Honorable the Judges of the Supreme Court further to understand and be informed, that, on the second day of June, A. D. 1863, while both branches of the General Assembly were in session, Mr. Bushnell, the Senator from La Salle, introduced in the Senate a joint resolution that the General Assembly adjourn *sine die*, on the 10th day of June, 1863, which was laid over under rule 43 of the Senate, that, "All resolutions presented to the Senate shall lie one day on the table, unless otherwise ordered," and no further action was taken thereon, until in the forenoon of June 8th, 1863, when the resolution was called up, and after being amended so as to read "*Resolved*, by the Senate, the House of Representatives concurring therein, That this General Assembly will adjourn *sine die*, on the 8th inst., at six o'clock P. M.," it was passed by the Senate and a message of such action was delivered by the Secretary of the Senate to the House of Representatives, during their forenoon session of that day. The House of Representatives adjourned until two o'clock P. M., and immediately after the House was called to order, at the said hour of two o'clock, the said message from the Senate was taken up, and upon consideration of the resolution, the same was amended by striking out "8th," and inserting in lieu thereof "22d," and striking out "6 o'clock, P. M.," and inserting "10 o'clock A. M.," and then passed by the House of Representatives as amended, which action

was immediately, on the assembling of the Senate, at 3 o'clock P. M., reported by message to the Senate, and as soon as the message was delivered, the Senate took up the same and the question being, shall the Senate concur in the amendment of the House, the vote was taken by yeas and nays, when the question was decided in the negative, as follows, to wit:

Yeas:—Berry, Blanchard, Gregg, Green, Knapp, Lindsey, Mason, Moffett, Ogden, Vanderveer, and Worcester.—11.

Nays:—Addams, Allen, Bushnell, Dummer, Funk, Lansing, Mack, Peters, Pickett, Richards, Schofield, and Ward—12;

And during the afternoon session on the said 8th day of June, the House of Representatives passed the following resolution, to wit:

“*Whereas*, The House desires to recede from its action taken this day, in amending and adopting the Senate resolution in relation to adjournment, therefore,

“*Resolved*, That the Honorable Senate is hereby requested to return said resolution as amended, to the House, for re-consideration,” and the House notified the Senate of the passage thereof by a message delivered by the Clerk of the House immediately after (and before any intervening business had occurred) the vote of the Senate to non-concur in the amendment of the House, and after the delivery of such message, there were no other proceedings in either branch of the General Assembly, or messages sent or delivered, on the question of an adjournment *sine die*, on that or any other subsequent day; nor had there been any before that day, and at the hour of four o'clock P. M. of June 8th aforesaid, the Senate adjourned until 10 o'clock, the next morning. The House adjourned at 5 o'clock P. M., until 7 o'clock P. M., when it again convened and adjourned at 9 o'clock 35 minutes P. M., until 9 o'clock June 10th, in pursuance of a prior resolution.

The people aforesaid, upon the relation of the said Thomas Harless, give the Honorable the Judges of the Supreme Court further to understand and be informed, that the Senate, in pursuance of adjournment, met at ten o'clock A. M., the 9th day of June, and

proceeded as usual with business: and after the reading of the journal, Senator Knapp reported from the committee on township organization, a bill in relation to a bridge across Salt Creek, which was ordered to a third reading. Several messages were received from the House of Representatives. Senator Green moved to refer the bill for an act in relation to claims allowed by the army board, to the committee on public accounts and expenditures, which was agreed to; when Senator Mack moved to adjourn until ten o'clock next morning, on which the yeas and nays were demanded, when 2 voted aye, and 14 nay. Senator Blanchard moved a call of the house, when 16 Senators answered, and the Sergeant-at-arms was instructed to bring in absent members, and on motion of Senator Green, the Senate adjourned until 3 o'clock P. M., at which hour the Senate met pursuant to adjournment, and on motion of Senator Mason adjourned until 10 o'clock next morning. That the Senate met pursuant to adjournment, at 10 o'clock June 10th, when the journal was read and approved, and the Senate proceeded with their usual business, in the course of which, bills were reported from several of the standing committees, and ordered to a third reading, and reports made by the committee on engrossed and enrolled bills, after which the Speaker of the Senate read the following communication, to wit:

"STATE OF ILLINOIS, EXECUTIVE DEPARTMENT.

"TO THE GENERAL ASSEMBLY OF THE STATE OF ILLINOIS:

"Whereas, On the 8th day of June, A. D. 1863, the Senate adopted a joint resolution to adjourn *sine die* on said day at six o'clock P. M., which resolution, upon being submitted to the House of Representatives on the same day, was by them amended by substituting the 22d day of June and the hour of 10 o'clock A. M., which amendment the Senate thereupon refused to concur in;

Whereas, The Constitution of this State contains the following provision, to wit:

"SEC. 13, ART. IV. In case of disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he

thinks proper, provided it be not a period beyond the next constitutional meeting of the same.'

"Whereas, I fully believe that the interests of the State will be best subserved by a speedy adjournment, the past history of the present Assembly holding out no reasonable hope of beneficent results to the citizens of the State, or the army in the field, from its further continuance;

"Now, therefore, In view of the existing disagreement between the two houses in respect to the time of adjournment, and by virtue of the power vested in me by the Constitution aforesaid, I, Richard Yates, Governor of the State of Illinois, do hereby adjourn the General Assembly now in session, to the Saturday next preceding the first Monday in January, A. D. 1865.

"Given at Springfield, this 10th day of June, A. D. 1863.

(Signed)

"RICHARD YATES, Governor."

And after reading the same vacated the chair. And on motion of Senator Berry, Mr. Underwood, the Senator from St. Clair was elected Speaker *pro tem.*, and on a call of the Senate, twelve Senators were found to be in attendance, when the Sergeant-at-arms was directed to bring in absent members, and afterwards the proceedings under the call were dispensed with, and a message received from the House, that it had appointed their part of a committee of conference on the bill for the relief of sick and wounded soldiers, and asking the Senate to concur, and appoint their part of said committee, and the Senate concurred in said resolution and appointed their part of said committee. A message was received from the House that they had passed a resolve that a joint committee be appointed to prepare an address to the people of the State, with the reasons why the members of the Legislature were not engaged in transacting the legitimate business for which they were elected, and had appointed their part of the committee, which resolution was taken up, concurred in, and the committee on the part of the Senate appointed, and then the Senate adjourned until 3 o'clock P. M., at which hour it met pursuant to adjournment, and on call of the Senate thirteen Senators answered; when Senator Green, from the joint committee of conference on the bill for the relief of sick and wounded soldiers, reported that the committee had agreed to recommend

that the House concur in the amendments of the Senate. A message was then received from the House, on the passage of a joint resolution, which was concurred in by the Senate, and then another message was received that they had adopted a protest and ordered it spread upon the journal, and asked the concurrence of the Senate in the same; and on motion of Mr. Green, the protest was taken up, adopted, and ordered to be entered on the journal of the Senate, and said protest was signed by thirteen Senators and fifty-six Representatives, and reads as follows, to wit:

THE PROTEST OF THE DEMOCRATIC MEMBERS OF OUR LEGISLATURE.

Upon this 10th day of June, A. D. 1863, while the General Assembly were in session and engaged in the discharge of their constitutional duties, an attempt by the Governor of Illinois was made to dissolve this body; which attempt, illegal, unconstitutional, and outrageous as it is, must inevitably result in the cessation of any further legislation at this time.

The circumstances attending this monstrous and revolutionary usurpation of power, and the injurious consequences, which must result to the people of the State, demand a brief statement on our part which we submit with confidence to the consideration of a discerning and candid public, whose rights have thus been ruthlessly invaded, and whose interests have been disregarded and trampled under foot.

The action of the Governor in this nefarious attempt to stop the legislation of the State is supposed to be based upon the following provision of the State constitution.

“ART. IV—SEC. 13. In case of disagreement between the two houses with regard to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he thinks proper, provided it be not to a period beyond the next constitutional meeting of the same.”

And the first question to be determined is, what is such a disagreement under the constitution as would justify the interposition of the Executive? Nor is the answer difficult to arrive at, since this point has been so well and thoroughly settled that it needs but its statement to determine the inquiry beyond cavil or contradiction. When one house amends the resolution or alters legislative action of the other, as to the time of adjournment or any other subject, and the house proposing the resolution or action refuses to concur with the amendments so made, the amending house must be first informed of such non-concurrence, in order to recede and concur or take such other action in the premises as may tend to an agreement of both on the basis of compromise.

The amending house, being informed of non-concurrence in its action by the other, may either itself recede and concur, or adhere, and propose and appoint a committee of conference, which is the next step to be taken. And it is only when one house refuses to join in a committee of conference, or when such committee, having been appointed, fails to arrive at a common result, or, having so done, the same is not agreed on and adopted by both houses, that the disagreement spoken of in the constitution has been produced; and the usual parliamentary proceeding is to have two free conferences before final disagreement results. Both houses must be at a dead lock, without hope of or effort towards agreement, before Executive action can be invoked or legally taken. Were the rule otherwise, it would require the invariable agreement of each house to whatever the other chose to propose. And until this time it has never been questioned in Europe or this country that such was the rule.

Nor can the Executive take action, even where an actual disagreement exists, until officially informed thereof by both houses.

Tested by these principles, we present the facts in the present case, which will demonstrate the indefensible character of the proceeding which we reprobate and condemn.

“Resolved by the Senate, the House of Representatives concurring therein, That this General Assembly will adjourn sine die on the 8th inst., at 6 o'clock P. M.”

Which resolution was at once transmitted to the House, and, being taken up by that branch of the Legislature, was amended by the substitution of the 22d day of June instead of the 8th.

The resolution, being thus amended, was returned to the Senate for its action, whereupon that body refused to concur in the amendment.

The House was not then, and has not since been, officially informed of the non-concurrence of the Senate in the amendment in question, and no opportunity has as yet been afforded that body to recede from its previous action, if it so desired.

The regular parliamentary progression has not been observed; the House has not refused to recede and concur with the Senate in its action; no committees of conference have been proposed or appointed; and, in short, no disagreement has existed, or can be presumed as existing, in the premises.

Neither has the legal and official notification of a disagreement been laid before the Governor, as, indeed, it could not have been, since it was well known and understood that there was no such disagreement in fact.

We have thus briefly stated the position of affairs which the Governor of the great State of Illinois has made use of as a pretext for an arbitrary, illegal attempt to bring the deliberations of the General Assembly to a close.

By this action he has deliberately and designedly defeated the passage of measures of great public importance, and demanded by the exigencies of the times.

He has defeated the appropriation of one hundred thousand dollars for the gallant sons of Illinois who are bleeding and dying upon the battle-field and in the hospital, and whose terrible condition invites the sympathy of every human heart, and demands the earnest effort in their behalf of every citizen of the State on which they have shed imperishable glory. The bill for that purpose, already passed both houses, and pending simply upon a slight difference of opinion as to some of its details, in the lower house, which difference has now been happily removed, is defeated merely because the miserable partisanship of the Chief Executive, who

usurps the unmerited title of the "Soldier's Friend," prevented him from consenting that a legislature having a majority of his political opponents should have the honor, as they would enjoy the privilege, of flying to the rescue of their gallant brethren.

He has defeated the bill for the sale of the coin in the treasury and the payment of our interest in treasury notes, saving hundreds of thousands to the people, which was on its final passage as the supporters of this action left the halls of legislation at the bidding of their master.

He has defeated the passage of the general appropriation bills already passed the Senate, and pending in the House and ready for passage, which the Senate had acted on without delay, and to which no obstruction was intended to be, would or could have been, interposed by the House.

He has defeated the printing of the report of the State Agricultural Society, an appropriation for which passed the House and was on its passage in the Senate, and the distribution of the appropriation for agricultural purposes made by the general government, and as yet unapplied to the ends for which it was intended, to the great detriment of the vast agricultural interests of Illinois, for whose benefit the measures were intended.

He has defeated the appropriation for the State Normal University, and the property will be sold under the existing judgments, and this noble institution be destroyed.

The memory of the great dead could not restrain him, and the appropriation for the erection of a monument to Douglas receives its death blow at his hands.

He has defeated the general and local legislation of the State, for much of which pressing necessity existed, and which was so fully matured as to require for its completion but slight farther action.

He has done all this without the shadow of a legal pretext, and in defiance of a well nigh universal public opinion.

Even partisanship affords no palliation for the pursuit of such a course, since no political measure has been pressed upon either branch of the Assembly during the recent period of its session.

Which is the more guilty, the individual who proposes, or the wretched agents who carry into effect, an act so utterly indefensible, it is not for us to determine. It is sufficient that all the actors, aiders and abettors of this scheme to block the wheels of government will receive the condemnation they deserve from an outraged people.

The manner in which this action was attempted to be taken deserves a passing notice. The statement by one branch of the government to a co-ordinate branch thereof, that its action has not been conducive to the public welfare, is disrespectful in terms, and an insult so obvious that we dismiss it with the remark that, if such insinuations could be permitted or were justifiable in any event, they come with an ill grace from the source of the delays to legislation during the former part of this session, and the entire cessation thereof at the present.

When it is considered that the Governor has been absent from his post of duty during the present portion of our session until within the last twenty-four hours, and that members of his political party, (who render to his commands the most abject obedience) repeatedly seceded from the Senate during the winter session, and have given a quorum of but two days and one-half during the summer continuation thereof, the suggestion that the General Assembly have failed in the performance of their duties deserves only our contempt.

Earnestly protesting against this arbitrary and illegal act of the Governor, and insisting that the General Assembly has still a legal existence, and has neither been adjourned nor constitutionally dissolved, we ask that this, our protest, may be entered on the journals of the respective houses.

SENATORS.

William Berry,
Israel Blanchard,
William H. Green,
Hugh Gregg,
Colby Knapp,
John T. Lindsay,
Albert C. Mason,

Samuel Moffat,
W. A. J. Sparks,
Bryant T. Scofield,
William H. Underwood,
Horatio M. Vandever,
Linus E. Worcester.

REPRESENTATIVES.

M. W. Fuller,	S. W. Miles,
A. G. Burr,	E. W. Menard,
James B. Turner,	M. Brand,
Chas. A. Keyes,	T. B. Hicks,
C. A. Walker,	W. W. O'Brien,
Ambrose M. Miller,	Samuel A. Buckmaster,
D. W. Odell,	John Gerard,
S. P. Shope,	T. C. Gibson,
A. E. Wheat,	Jefferson A. Davis,
Lyman Lacey,	Wm. J. Brown,
C. F. Coffeen,	George Dent,
Wm P. Witt,	L. G. Reid,
James M. Sharp,	J. N. English,
P. Dougherty,	Elias Wenger,
Chas. E. Boyer,	James Holgate,
John Kistler,	James M. Epler,
M. B. Patty,	Henry M. Williams,
John O. Dent,	Jas. M. Washburn,
H. K. Pepper,	James H. Smith,
John T. Springer,	Jesse R. Ford,
William Watkins,	John W. Wescott,
Scott Wike.	C. S. Conger,
John W. Merritt,	Perry A. Armstrong,
Reuben Roessler,	John G. Graham,
John Monroe,	James M. Heard,
John Ten Broek,	Milton M. Morrill,
J. S. Busey,	Joseph Sharon,
Thomas B. Cabeen,	R. H. Cann.

And thereupon the Senate adjourned until 9 o'clock the next morning when it met pursuant to adjournment.

The people aforesaid, upon the petition of the said Thomas Harless, further give the Honorable the Judges of the Supreme Court to understand and be informed, that on the morning of June 10th, the House of Representatives met pursuant to adjournment and proceeded with its usual business, during the course of which

a resolution for a committee of conference upon the bill for the relief of sick and wounded soldiers was adopted; a communication from the Governor in relation to the discharge of soldiers from the Marine Artillery was laid before the House, bills passed, bills introduced and referred, after which a bill for an act to provide for the payment of the interest upon the State debt, and for the sale of certain gold and silver coin, belonging to the State of Illinois, was taken up, when Mr. Lacy, of Mason, moved an amendment, pending which a message from the Governor was announced, in regard to which the following is the only entry in the journal: "A message from the Governor was announced by the doorkeeper and read, but the bearer of the message was not recognized by the Speaker," and thereupon motions were made to adjourn, and withdrawn, when a call of the house was made, and forty-four answering, further proceedings under the call were dispensed with, and a joint resolution passed for the appointment of a committee to prepare an address to the people, on the subject of the Governor's attempt to adjourn the General Assembly, and then a message was received from the Senate that they had concurred in the resolution for a committee of conference on the bill for the relief of sick and wounded soldiers, when the House adjourned until 2 o'clock P. M., at which hour the House met pursuant to adjournment, and the committee of conference on the bill for the relief of sick and wounded soldiers, reported a recommendation that the House concur with the amendments of the Senate, which was adopted; then a message was received from the Senate of concurrence in a resolution of the House, then a resolution was moved by Mr. Keyes, of Sangamon, and adopted, and thereupon the bill for the relief of sick and wounded soldiers was taken up, and on the question, shall the House concur with the Senate in its amendments, the yeas and nays were taken, when it appearing that 44 voted yea and none nay, which being less than a quorum, the bill failed for the want of a quorum; and then the protest hereinafter set forth, signed by thirteen Senators and fifty-six Representatives as aforesaid, was submitted to the House and ordered to be spread upon the journal, which was done.

The people aforesaid, upon the relation of the said Thomas Harless, gives the Honorable the Judges of the Supreme Court further to understand and be informed that the journals of both branches of the General Assembly are silent as to any proceedings in either branch after the morning of the 11th day of June, as before recited, until the afternoon of June 23d, 1863, when at the hour of 3 o'clock P. M., the following entry appears on the journal of the Senate: "The Speaker *pro-tempore*, Mr. Underwood, having retired from the chair, on motion of Mr. Lindsay, the Senator from Peoria, Mr. Knapp, the Senator from Logan, was elected Speaker *pro-tempore*, and thereupon took the chair," when on motion, the senate adjourned to 9 o'clock the next morning, at which time the Senate met pursuant to adjournment, when the journals were read and approved, when a message was received from the House of Representatives that they had passed the following resolution, to-wit:

"*Resolved* by the House of Representatives, the Senate concurring therein, that the two houses of the General Assembly, at 10 o'clock A. M. this day take a recess until the Tuesday after the first Monday of January, A. D. 1864, at 10 o'clock A. M.," which was concurred in by the Senate, and then other resolutions were passed by the Senate, and among them the following, to-wit:

"*Resolved* by the Senate, the House of Representatives concurring herein, that a joint committee of one on the part of the Senate and two on the part of the House of Representatives, be appointed to wait on the Governor and inform him that the General Assembly is now ready to adjourn for the recess, and ask him if he has any further communication to lay before them." And Senator Lindsay was appointed a member of said committee on the part of the Senate, and immediately thereafter the Senate received a message from the House of Representatives that they had concurred in the passage of the same resolution, and appointed Messrs. Fuller and Keyes as their part of said committee, and thereafter Senator Lindsay reported that the joint committee had waited on the Governor in obedience to the joint resolution, and that the committee were informed by his Excellency that he had no communications to lay be-

fore this body, and that he did not recognize the legal existence of this as a legislative body, and after the receipt of a message from the House of Representatives that they were now ready to adjourn for the recess, on motion the Senate adjourned until the Tuesday after the first Monday in January next, at 10 o'clock A. M., in pursuance of the joint resolution before passed; and further, that the following entry next after the protest appears on the journal of the House of Representatives, to-wit:

"On motion of Mr. Fuller, the House at 2 o'clock and 20-minutes P. M., June 23d inst., adjourned until to-morrow morning at 9 o'clock," and further, that at the hour last mentioned, on the 24th day of June, the House of Representatives met pursuant to adjournment, when the reading of the journal was dispensed with, and a message from the Senate received that they had passed the joint resolution aforesaid for the appointment of a joint committee to wait on the Governor, which, on motion of Mr. Miller, of Logan, was taken up and concurred in, when the Speaker appointed Messrs. Fuller and Keyes on said committee, then the House passed the joint resolution for a recess aforesaid, and then passed several resolutions on different subjects, when Mr. Fuller, from the joint committee to wait on the Governor, submitted the same report to the House that was made by Senator Lindsay from said joint committee to the Senate as aforesaid. A committee was then appointed to inform the Senate that the House was now ready to adjourn for the recess, and after receiving a message that the Senate was ready to adjourn, and the hour of 10 o'clock having arrived, Mr. Speaker Buckmaster declared the House of Representatives adjourned for a recess until the Tuesday after the first Monday of January, A. D. 1864, at 10 o'clock A. M., in pursuance of the joint resolution to that effect.

And the people aforesaid, upon the relation of said Thomas Harless, give the Honorable the Judges of the Supreme Court further to understand and be informed, that, all the facts as hereinbefore recited, do appear on the journals of the respective branches of the Twenty-third General Assembly of the State of Illinois, as they are hereinbefore recited, except as to the presentation to the

Governor of the bill to incorporate the Wabash Railway Company, and that no other facts touching the question of adjournment *sine die* appear on the journals of the proceedings of the 8th day of June, or prior thereto, at the June meeting, and no other proceedings on the days subsequent to the said 8th day of June than are hereinbefore recited, appear on the journals of the proceedings of said General Assembly. And further, that the journals of the proceedings of the 23d and 24th days of June, do not show how many Senators or Representatives were present. And further, that the record of the executive acts, as kept by his private secretary, and deposited in the office of the Secretary of State, shows that "the Bill for an Act to incorporate the Wabash Railway," was presented to the Governor for his approval, with other bills passed at the same session, which have been approved, but said record is silent in regard to the disposition of said bill; and further, that the said executive record shows no entry in regard to the adjournment of the General Assembly by the Governor, or otherwise.

The people aforesaid upon the relation of Thomas Harless, protesting and insisting that the facts as before recited, as being evidenced by the journals of the 23d General Assembly, are exclusive and conclusive evidence, and that no inquiry can be made as to the proceedings of the General Assembly, except in and through its journals, yet for the purpose of presenting all the facts touching the subject matter of this information, whether the same be proper for the consideration of a court or not, and giving the defendants all the benefit therefrom that the law will allow, but still protesting that the relator and his associates are not and cannot be, by the rules of law bound by such facts, appearing otherwise than from the journals, gives the Honorable the Judges of the Supreme Court further to understand and be informed, that, on the said 10th day of June at 11 o'clock in the forenoon, while the House was considering the Senate bill to authorize the Treasurer to sell the coin in the State Treasury, &c., the private Secretary of the Governor appeared on the floor of that body, and being announced by the door keeper, without addressing the Speaker, or being recognized by him, commenced to read the proclamation of the Governor, purporting to

adjourn the General Assembly. The Speaker rapped continuously with his gavel, until the Secretary was about half through, when the Secretary persisting in reading, the House and Speaker were silent, until he had concluded. The Speaker then stated to the House, the Secretary being on the floor, that the message was not received by the House, because it was disrespectful in terms, and the Secretary had attempted to deliver it without addressing the presiding officer or being recognized by him, and was not delivered to the House through the Speaker as established by legislative custom. No action was taken on the matter of receiving the message, and it was not entered on or made a part of the journals; but the paper was carried by a page to the Clerk's desk, while the Speaker was announcing that it was not received.

After the reading of the Governor's proclamation, all the republican members of both branches left their seats and refused to return, after being summoned, thus leaving but 13 Senators and 56 Representatives, less than a quorum in both houses, at that time, and a quorum was not obtained thereafter. On the evening of that day, the members of both houses left their seats, and did not resume business until June 23d.

The Lieutenant Governor remained in Springfield until the 12th of June, but refused to recognize the Senate as in session after he had vacated the chair. On the 12th of June he left Springfield, and thereafter was at his home, in Du Page county, and at Chicago, attending to his private business, until after the 24th of June.

On the 19th of June, the Governor prepared a message with his objections to the bill to incorporate the Wabash Railway Company, and sent the enrolled act with his original message by private hands to the Lieutenant Governor.

The Lieutenant Governor resides in Du Page county, about 200 miles from Springfield. The messenger went from Springfield to the residence of the Lieutenant Governor, in Du Page county, and on the 20th day of June, delivered the Bill with the veto message to the Lieutenant Governor, who was then at his residence engaged in domestic duties.

The Lieutenant Governor retains the act and message, and has not delivered it to the Secretary of the Senate, or laid it before the Senate, or in any way treated the legislature as in session, but denied and denies that it was.

On the 19th and 20th June, there was no actual session of the Senate, and the chamber was locked, but the Secretary was in Springfield and had possession of the journals and papers of the Senate.

On the 23d and 24th days of June there was less than a quorum present in each branch, all of which facts last recited can only be shown by parol evidence, and the relator again denies that said facts, known to exist only by parol evidence outside the journals are, or can be available in the law so as to be considered by a court, but as such question of law, submits the same to the Court.

The people aforesaid, upon the relation of the said Thomas Harless, further give the Honorable the Judges of the Supreme Court to understand and be informed that afterward, to-wit: on the 25th day of June, A. D. 1863, the incorporators named in said act to incorporate the Wabash Railway Company, accepted the same and opened books for the subscription of the Capital Stock which was then and there subscribed, and the Company fully organized by the election of the relator as President, Charles H. Ham as Secretary, and Benjamin E. Gallup as Treasurer, and it is necessary for the said corporation to have and procure a certified copy of the said Act from the Secretary of State, to be used as evidence of the contents thereof, and yet the Secretary of State cannot furnish the same because the enrolled Act is not in his custody or control, and has never been deposited by the Governor or Lieutenant Governor, or any other officer or person in said office, but on the contrary, is now, and has been since the 20th day of June last, in the hands of Francis A. Hoffman, the Lieutenant Governor of the State of Illinois, where it was placed, as before alleged, by Richard Yates, the Governor of said State.

And the people aforesaid upon the relation of said Thomas Harless aver that the foregoing is a full, complete, and true statement of all the facts touching the passage of the "Act to incorpor-

ate the Wabash Railway Company," and the action of the Governor thereon, and the proceedings in and by the General Assembly subsequent to the 8th day of June, A. D. 1863.

Wherefore the people aforesaid, by the said Thomas Harless, relator as aforesaid, pray that an alternative writ may be issued to Richard Yates, Governor, and Francis A. Hoffman, Lieu't Governor of the State of Illinois, commanding them to return said writ by a day named therein, with the causes why they fail and neglect to deposit the Act to incorporate the Wabash Railway Company in the office of the Secretary of State, and that such order may be made in the premises, upon a hearing, as to your Honors may seem meet, &c.

N. C. Gandy
att'y for Relator

30

People's Lib.

vs

Richard Yates &
H. A. Hoffmann
and others

1863

Refused

8420

to of Illinois
Cook County 358

Personally comes
Harless & being duly sworn in
and declares & says that he is
the Relator in the foregoing petition;
that he has read the same
& ~~the~~ knows the contents thereof
& that all the statements
therein are true as he is informed
believes, except as to the
acceptance of the provisions
of said act & the organization
of said Company, as to those
he says they are true upon
~~the~~ his own knowledge

Thomas Harless

Schwabach and Son
15 1/2th day of October
A.D. 1863 before me

Edmund P. Boone
Notary Public

To Francis A. Hoffman Lieut.

Governor of the State of Illinois.

Sir; You will take notice
that the Relator in the foregoing
Petition will in the Supreme Court
of the State of Illinois to be holden
on the Tuesday after the second
Monday of November A.D. 1863. for
the first Grand Division at Mt.
Vernon, on the opening of Court
or as soon thereafter as counsel
may be heard, move for an
alternative Writ of Mandamus
according to the prayer of said
Relator.

October 12. 1863. W. C. Gandy.

Atty. for Relator.

State of Illinois On this 30th day of Oct-
ber County Cook over A.D. 1863 before
the undersigned Notary Public in and for
the City of Chicago in said County & State
personally appeared William C. Gandy who
being sworn says that he served the
foregoing Petition and notice thereto
attached on Francis A. Hoffman
the Lieut Governor of the State of Illinois
by delivering to him a true copy
thereof in the County of Cook and

State of Minois on the 13th day of
October A. D. 1863 and that at the
time of such service Richard
Yates the Governor of said State
was absent from the State.

W. L. Gandy

In witness that the foregoing was
subscribed & sworn to before
me the day & year first of said
said I have affixed my
notarial seal on said day

George Chandler
Notary Public