

gun to the polls; shooting at a mark or target being a favorite pastime on election day. It is shown that these armed men belonged to both parties; the contestants' witnesses, with one or two exceptions, deny emphatically that they were in any manner or degree intimidated, establish the fact that there was no rioting, quarreling or interference with voters, and that the election was unusually quiet, peaceable and orderly. It is true, that on this occasion, many came armed, having reason to apprehend an assault upon them by citizens from West Virginia and others; but their apprehension proved groundless, and not a gun was fired or employed menacingly during the whole day. It is charged also that the judges of election, through inadvertance or otherwise, miscounted the ballots and made erroneous returns both for the sitting member and for the contestant. That there were numerous irregularities and informalities in the conduct of this election on the part of several judges, as well as their clerks, does not admit of a doubt. Thus in District No. 5, no return at all was made for Senator. This palpable clerical error is sought to be availed of to the advantage of the contestant, his opponent having here received a majority of ninety-nine votes, but the injustice of excluding this poll is so glaring that the undersigned cannot believe it will be seriously contemplated by your Honorable Body. Were it so, it would be impossible to imagine what wrongs and frauds might not be perpetrated by dishonest clerks. Such an omission as this, which has, however, been fully and satisfactorily supplied by the poll books, it is the duty of your Honorable Body to remedy, and the undersigned have in a spirit of equity and justice accorded the said majority of ninety-nine to the sitting member.

Great weight is sought to be given to a re-count of the ballots in the Clerk's office, which took place more than a week after the election, and was conducted by a committee of six citizens, not acting under oath, on which occasion the contestant was present, but the sitting member had no notice thereof, and was not. It is submitted, that this re-count is untrustworthy and not to be relied on for the reason that the ballots were not for several days in the custody of any officer known to the law, and that frequent opportunities might have been had for tampering with them.

The Clerk of the county, who, in contemplation of law, had the custody of the poll books and ballots, is shown to have been absent from his office for nearly a week, between the 10th and 17th days of November, and the deputy clerks were in exercise of their duties, without having taken the oath of office prescribed by law, and did not take it until the 10th day of December following. The evidence in the case shows, that many ballots were lying loose and scattered upon the table in the vault belonging to the Clerk's office; that various