

That persons who clamor for practice as better than theory, and are celebrated by themselves and their friends as practical men, are always more trustworthy than those whom they deride as theorists. The former have usually no guide but their own (often narrow) experience; the latter sometimes have the light gathered by a thousand clear and active minds, during ages of diligent and enlarged observation. A properly constructed theory is the methodized, the digested result, of what has been seen and done by hundreds of "practical men."

That a first love is necessarily purer, or stronger, than a second, or third, or fourth love.

That keeping the door open in cold weather is conducive to health.

That other people have not as many, or as great cause of unhappiness as ourselves.

That any simpleton will do for a legislator.

That any man, whom his neighbors would not trust with a hundred dollars of their own money, is fit to be trusted with a most important public interest.

That education consists only in being sent to school; or in book learning.

That political consistency is shown by adhering constantly to the same men, through all their changes of conduct and opinion.

That it is inconsistency to think with one party on some points, and with an opposite party on other points.

Report of the Committee appointed to inquire into the organization of the two bodies claiming to be the house of Representatives.

The commencement of the Report is a mere history of the facts, as they took place at the first meeting of the House, and as published in the "Journal." We have given the concluding part of the Report, and all the material testimony of both sides. Our readers can see at a glance who were the rioters—Ed. Journal.

From this brief summary of the facts in regard to the transactions in the Hall of the House of Representatives, it appears that there were two bodies organized on the 4th inst. and the committee have learned from the testimony before them, and from other sources, that they both met at stated times, and have severally transacted business in the usual manner practiced by the House of Representatives. The only essential difference in their organization appears to be, that the body which elected Mr. Hopkins as Speaker, before proceeding to that election, and during the time that Messrs. Watts and Zeilin were waiting upon all the members returned by the official papers from the Secretary of the Commonwealth to vote for Speaker, admitted upon motion eight persons as members, without whose agency and presence it would have been impossible for them to have made the number required for a quorum. Of the undoubted right of the House, when duly organized by the election of a Speaker, to determine upon a return in the first instance, there can not be a question; and it would be travelling beyond the constitutional power of the committee to attempt to discriminate the returns on which either or both the bodies organized. Those returns have, however, been placed before the Senate in the testimony of Mr. Shunk, and may aid in arriving at such conclusion, in regard to the two bodies now assembled, as will tend to settle the unhappy difference which interferes with the wonted peace of the commonwealth. The body over which Mr. Cunningham presides as Speaker, took no question upon the returns furnished by the Secretary of the Commonwealth, considering them all of equal validity; and have thereby escaped one prime defect in their organization which attaches strongly to the other.

The committee have noticed with great satisfaction the remarkable coincidence of all the testimony, and they feel gratified that the Senate will not be embarrassed in their decision by conflicting evidence. Before however, dismissing the subject, they feel that they should fail in a proper discharge of their duty, did they not express their entire reprobation of the circumstances which had led to the unfortunate division in one branch of our government, which the present state of things present. By an illegal and unjust departure from duty, the return judges of the county of Philadelphia have brought about scenes which will forever stain the fair fame of the State, and it is to be hoped that if the present laws are insufficient to punish such unrighteous invasion of the rights of the people that the very first act of a duly constituted legislature will be the passage of a law inflicting the severest penalties for such an abuse of power. Should such guards be removed from the sanctity of the elective franchise, and the people be left to the fraudulent practices of a few returning officers, we shall soon have every county of the Commonwealth infected with the active poison, which in the county of Philadelphia has trampled upon all law and all right and is now shaking the State to its foundations.

TESTIMONY.

Francis R. Shunk, Esq. being duly sworn, saith—That he was not present in the Hall of the House of Representatives

on Wednesday afternoon, the 5th of December, instant, until a late hour. Does not recollect any instance where a member of the House of Representatives took his seat upon any other evidence than that received from the Secretary of the Commonwealth in the organization of the House, except the case of Ellis Lewis in 1832 and 1833, there then being no other return from the Secretary of the Commonwealth. Cannot tell who voted on the motion of Mr. Hopkins, that Charles Pray and others be placed upon the list of members and admitted to seats as members of the House of Representatives, when I put the question I did not look who voted, but I heard a sound of Aye, and when I put the negative of the question, there was no answer, this question was put after Mr. T. S. Smith had made his objection and protest, and requested those gentlemen who thought such a question illegal and improper should not vote upon it. Upon calling the names of the members to vote for Speaker, I only called as members from the county of Philadelphia the eight gentlemen whose names were on the return presented by Mr. Pray. When I called the list of members and only fifty six answered, I considered that the separate action of the two sections of the House was obvious. Among the fifty-six members who answered, were the eight gentlemen named on the return presented by Mr. Pray. Does not think a House of Representatives legally organized in the first instance, would cease to be a House if no quorum of the members subsequently attended its meetings, but would be House for the purpose of adjourning from day to day, but for no other purpose. Has heard it frequently said by the members of the House over which Mr. Hopkins presides, that the members of the Cunningham House should not be permitted to occupy the Hall of the House of Representatives; they regarded the House organized under Mr. Hopkins as the legally constituted House of Representatives. Does not recollect any instance where tellers were appointed other than the Clerks to take the votes for Speaker. The usual mode of organizing the house, is first to call the names of the returned members, to ascertain who are present, before they proceed to elect a Speaker! The object of calling the roll in the first instance is to ascertain the presence of a quorum, but that could be as well ascertained by the members voting for Speaker.

FR. R. SHUNK.

Sworn and subscribed before me, December 15, 1838.

F. FRALEY, Chairman.

Thomas S. Smith, Esq. being duly affirmed, saith—That he has attended several meetings of the House of Representatives, organized under Mr. Cunningham as Speaker since its organization on the fourth inst. some of us meetings were held in the Supreme Court room of the State Capitol and some at Wilson's Hotel, in room No. 40. The first meeting after the adjournment in the Hall of the House of Representatives in the Capitol, was at the room in Wilson's house; several meetings were held there, at one of which there was a quorum. During the time they met at Mr. Wilson's house there was a fear prevailing [the breasts of the members generally, that it was not safe to come up to the Capitol on account of the apprehended violence of persons collected in the borough of Harrisburg. On Wednesday, the 5th inst. there was an attempt made to meet in the Hall of the House of Representatives; I came up to the House, it was crowded with persons, some members, and some not, most of them not members. I recognized among them a number of persons whom I had seen in the Senate Chamber on the afternoon of the 4th inst. and who were active in the disturbance which then took place in that Chamber. I suggested to some gentlemen whom I saw there, and who had participated in the proceedings of the House which elected Mr. Cunningham Speaker, that it was impossible for us to organize then, that we had better agree informally to adjourn. I left the Hall, and after I had got out of the Hall some disturbance took place, the particulars which are unknown to me as I did not see it, having only heard the noise and bustle. After that time we met at Mr. Wilson's Hotel at the standing hours of meeting fixed on the 4th inst., until it was stated by one of the members that Mr. Wilson had given notice that he could not permit us to meet there, as threats had been made to pull down his house if he permitted it. The next meeting I attended was in the Supreme Court room, this was after the arrival of the troops, since then we had met in the Supreme Court room.—Considers the House organized under Mr. Cunningham is still in existence, has seen the journal and believes there has been a daily meeting. There was but one meeting at which I attended, when a quorum was present. There has been no determination on the part of the Cunningham house to take possession of the Hall of the House of Representatives by force; on the contrary there has been a determination to do nothing by force. Did not subscribe the oaths at the time of the organization of the House; believes that Mr. Cunningham then subscribed. I subscribed at the meeting held at Mr. Wilson's, at which we had a quorum; thinks that meeting was held on Wednesday night. The oaths and affirmations were administered by Mr. Cunningham in the Hall and subscribed afterwards. Does not think any secession would have taken place or any separation ensued, if Mr.

Lopkins had not made his motion to place the name of Charles Pray and others on the list of members; conceives that then Mr. Hopkins and his friends seceded, as we were proceeding with the election of our Speaker. Mr. Stevens had previously to that time intimated that there might be a separate action on the part of those who differed with us as to the course to pursue in the organization of the House, and that it might produce the result of electing two Speakers. Did not understand Mr. Stevens to wish such a separation, but merely to intimate what might possibly happen. We held that the members elect could only act on the returns from the Secretary, and that no vote of any force could be taken upon the admission of persons other than those returned by the Secretary; we did not consider that such persons were admitted or could be admitted, and act in conformity with that view. We suppose a portion of the members elect might attempt to admit persons as members from the county, not returned by the Secretary, but did not know that they would carry it out by a separate organization.

TOS. S. SMITH.

Affirmed and subscribed before me, December 15, 1838.

F. FRALEY, Chairman.

THOMAS S. SMITH, Esq., being duly affirmed, states—That he came into the Hall of the House of Representatives a little before eleven o'clock, and was then informed that it was proposed to organize the House at eleven; he was told that it was at the suggestion of Mr. Pray, and asked Mr. Pray if it was so; he said 'yes.' At eleven o'clock Mr. Hill, making the announcement in the usual form, that the House should organize, moving that the Clerk of the last House should open and read the returns from the city of Philadelphia and the several counties of the Commonwealth. That motion was carried without a dissenting voice. It being stated that it was carried, the Secretary of the Commonwealth appeared at the bar, and stated he had the honor to present to the House of Representatives the official returns of the election of 1838, for the city of Philadelphia and the several counties of the Commonwealth for members of the House of Representatives. He went forward to the Clerk, and put them in his possession. The returns were all in one envelope. Mr. Shunk opened them, and proceeded to read the return from the city of Philadelphia. After reading the return from the city of Philadelphia, Mr. Shunk opened the return from the county of Philadelphia, and announced that it was the return from the county of Philadelphia. Mr. Pray from the county of Philadelphia, rose in his place and asked the Clerk by whom that return was signed; he was told by the Clerk who signs were as return judges. Mr. Pray said that was not a true return; that he had in his hand a return, which was the correct return, a certified copy of that which was filed in the Prothonotary's office of Philadelphia, which he presented to the Clerk by going to his table and giving it to him. Mr. Shunk asked if both these returns should be read, meaning the return presented by the Secretary and that sent in by Mr. Pray; and put it as a question. I rose in my place and objected to the reading of the return presented by Mr. Pray, insisting that the House could organize only on the returns furnished by the Secretary of the Commonwealth. I objected to the power of the body then assembled to take a vote on the subject, and contended that these persons who were returned as elected by the certificate presented by Mr. Pray, could only obtain their seats if the return presented by the Secretary was false, by contesting the election in a mode pointed out by the act of Assembly, after making that protest and giving those objections. Mr. Shunk proceeded to read both returns taking the question before reading, "Shall they be read?" and there was an answer in the affirmative: a considerable portion of the members present declining to vote. After the returns were all read, Mr. Stevens moved that the House proceed to the election of a Speaker, and that for that purpose two tellers be appointed. He put the question himself, and announced that it was carried; there were votes on the question both Aye and No—the noes few. One portion of the House I think declining to vote on the question, from what I heard afterwards. Mr. Stevens' motion included the names of the tellers, Mr. Watts, and Mr. Zeilin. Upon its being announced that the motion was carried, these two gentlemen proceeded to the Speaker's desk and placed some paper upon it, the contents of which I did not see. Mr. Watts, one of the tellers, called out the names of the members. Mr. Zeilin announced the vote that each gave for Speaker. Mr. Watts, in calling the names, called those from the county who were certified to be elected on the return from the Secretary of the Commonwealth. After they had called all the members' names, Mr. Watts, one of the tellers, announced that Thomas S. Cunningham had fifty-two votes for Speaker, and was therefore duly elected. Mr. Cunningham was escorted to the chair by two gentlemen, not now recollected, and made a short address to the House, and then asked the House if they would appoint a person to administer the usual oaths. He was responded to by several persons that the Speaker should himself call upon some one for that purpose, and the Speaker then named me. I advanced from my place to the front of the Speaker's chair, and administered the oath to Mr. Cunningham, who swore with the uplifted

hand; the oaths administered were those required by the constitution of the United States and the constitution of Pennsylvania. Mr. Cunningham then administered oaths and affirmations to the members, calling upon them to come forward for that purpose.

After the oaths had been administered to all those who came forward to be qualified, a motion was made by Mr. Spackman, that a committee be appointed to inquire into the returns furnished by Mr. Pray, and that the House be organized and ready to proceed to business. Mr. Spackman and myself were appointed by Mr. Speaker Cunningham, to perform that duty.

A motion was made by Mr. Cox for another committee—I think to wait upon the Governor—which was carried, and the committee appointed. A motion was made by some other person, that the rules of the last House be the rules of the present House until otherwise ordered.

A motion was made by Mr. Crabb, fixing the hours of meeting. A motion was then made to adjourn, put by the Speaker, and carried. This was all done in the Hall of the House of Representatives. The whole of the business was done in some considerable degree of confusion in the Hall. The confusion was among the members and spectators, who crowded the floor of the House, the lobbies and galleries, although the confusion did not interrupt the regularity of their proceedings. I have given you a statement of the course I proceeded of those gentlemen who elected Mr. Cunningham Speaker. Another portion of those present took a different course of proceeding. After Mr. Stevens' motion had been put and carried for the appointment of tellers to elect a Speaker, Mr. Hopkins, of Washington county, moved that the names of the members from the county of Philadelphia, and certified to be elected by the return presented by Mr. Pray, be put upon the list of members; Mr. Shunk put the question and there was a vote of Aye throughout the House to a considerable portion of the gallery. Mr. Shunk after that proceeded to call over the names of the members, and called in that list the names of the members for the county, as certified in the return presented by Mr. Pray; after they got through the list, they proceeded to elect a Speaker. Mr. Hopkins, after the election was concluded, was announced to be elected, having received fifty-five or fifty-six votes. I think fifty five votes—that portion of the body proceeded to do other acts in the course of organizing the House, but I do not recollect them, as my attention was called to the proceedings of the body with whom I acted; the two portions were acting at the same time and differing from each other, from the time Mr. Hopkins made the motion in reference to the county members, until the adjournment of the body which elected Thomas S. Cunningham Speaker, finally separated them. I left the House before the body which elected Mr. Hopkins Speaker, had framed their proceedings and cannot state any thing further of the proceedings of that body.

Question by Mr. Ewing—There was concert of action, apparently, until the time Mr. Hopkins made his motion to insert the names of the county members, as stated in the return presented by Mr. Pray. They agreed unanimously that the Clerk should read the returns. When Mr. Pray presented his return, I protested against it, and from that time they may be said to have acted separately, but the body which elected Mr. Cunningham Speaker, considered those returns a nullity, and acted upon the other. The other body commenced their separate action when Mr. Hopkins made his motion in reference to the county return, that being their first overt act of separation; my first act indicative of our views was my protest against reading the return presented by Mr. Pray. I have been a member of the legislature for three sessions before the present; there was a difficulty heretofore. The organization of the House has been conducted differently in one respect; instead of tellers being appointed to take the vote to elect a Speaker, they have been taken by the Clerk. Does not recollect that any question was ever taken upon the return.

Question by Mr. Kingsbury—It has been usual for the Clerk to take the question.

Question by Mr. Fraley—The body over which Mr. Cunningham was elected Speaker was transacted business before the election of Mr. Hopkins; I think that the committee had been appointed—that it was certainly doing business before he was elected.

Question by Mr. Kingsbury—The question taken by the Clerk on the return presented by Mr. Pray, was asked informally by the Clerk, before I objected, but I conceived the question suspended until after my objections were given at some length. He put the question; some few said aye, and I began to make the objection—not certain that he put the question after my objection, think he did not, but feel certain that he did not announce it carried after I had objected, nor at any time.

TOS. S. SMITH.

Affirmed and subscribed before me, December 14, 1838.

F. FRALEY, Chairman.

WM. M. WATTS, Esq. being duly sworn—States that he concurs generally, with the statement given by Mr. Smith, the variations from it are as follows:—When Mr. Burrows announced to the House

that he presented the official return, he went to the Speaker's table and laid the returns upon it, and then, without speaking, turned about and went to the fire place. Mr. Smith, in his protest, remarked that if there was any person there competent to act upon taking the question on the return furnished by Mr. Pray, it was the members from the city alone, as they were then the only persons whose returns had been read. Mr. McElwee, or a man said to be Mr. McElwee, of Bedford, replied to Mr. Smith; he was extremely violent and abusive of the Secretary of the Commonwealth, turning around and addressing the crowd that was in the galleries and lobbies, and continued speaking until Mr. Shunk advanced to his desk and spoke to him. After Mr. McElwee had ceased, Mr. Hopkins moved that both returns from the county should be read; the vote was put by the Clerk and some of the members and some of the crowd voting in the affirmative, no person voting in the negative.—After the returns from all the counties had been read, Mr. Stevens got up and stated that before he sat down he intended to move that the House proceed to elect a Speaker, and that tellers be appointed. That the proceedings of the House in permitting the returns furnished by Mr. Pray to be read were illegal, and that he and those who thought with him upon that subject would proceed to organize the House according to the return furnished by the Secretary of the Commonwealth; and after some further remarks moved that Mr. Zeilin and myself be the tellers. Mr. Smith, he remarked, I believe, that Mr. Hopkins moved to place the name of Charles Pray and others on the roll of members; I make this remark, because I stated that Mr. H. made another motion. Mr. Cunningham, of Huntingdon county, made the motion for a committee to wait upon the Governor. Mr. Cox, the motion that a committee be appointed to report rules. In the proceedings of the persons who elected Mr. Hopkins Speaker, my impression is that Mr. Shunk called both sets of members from the county of Philadelphia, being sixteen persons.

The committee to wait upon the Senate, of which Mr. Spackman was chairman, and the committee appointed to wait upon the Governor, were appointed while Mr. Shunk was calling the names of members to vote for Speaker. When Mr. Shunk declared Mr. Hopkins elected Speaker, there was a tremendous shout from the galleries, which was joined in by many sitting at the members' desks, and among the most vociferous was Mr. McElwee. Mr. Hopkins was conducted to the chair by Mr. McElwee and a man whom I have heard called Col. McCahen. The platform of the Speaker's chair was filled by persons apparently not members of the House, among them McCahen and some rough looking men—McCahen occasionally beckoning to the spectators in other parts of the House, as if to come forward.

Question by Mr. Sterrett—cross examined—Obtained a roll of the members from Dr. Fauss, and on calling the names, called but eight members from the county, namely—Michael Day, W. J. Crans, Adam Woelper, Hughes, Mears, Reed, Smith, Loyd. I mention these names because my attention was particularly called to them by the conduct of Mr. Shunk, that he read the return furnished by Mr. Pray first, before he read those furnished by the Secretary of the Commonwealth, and it occurred to me on the instant that he did not intend to read the names of the latter at all—but he did read them both.

Question by Mr. Ewing—Mr. McCahen, who conducted the Speaker (Hopkins) to the chair, is not to my knowledge a member of that House—there was a great deal of noise and confusion in the galleries—the crowd being repeatedly requested to keep quiet, but would not.

Mr. Stevens, after remarking that the House had got through with the ordinary business of the day, and that there were other persons there who wished to transact business, moved to adjourn.

Mr. Hopkins, after being conducted to the chair, was sworn, I think, by Mr. Smith, of Franklin county—not certain whether he swore or affirmed, and then Mr. Hopkins called upon the members to advance and be sworn.

Question by Mr. Kingsbury—Mr. Stevens said he presumed there were men in the Hall who differed from him as to the course to be pursued in regard to the organization of the House, but that was no cause for men, who were in other respects friendly, to become exasperated and encourage bad feelings; and as they might be conscientious in regard to organizing the House, as he believed the law requires them to do, that they might pursue a different course—and that when the names were called they might refuse to vote either way, or not vote at all—the House not being organized, could not compel them to vote.

Question by Mr. Kingsbury—Mr. Hopkins made his motion to read the return handed by Mr. Pray after Mr. Smith had made his protest, and after Mr. McElwee had commenced speaking and was interrupted by Mr. Shunk. Mr. Pray directed Mr. Shunk to read the return, but no vote was taken. Mr. Shunk merely asking the question, "shall the return be read?"

When the names were called some of the members answered 'aye,' some 'yes,' others answered 'Thomas S. Cunningham,'—one man, I think Mr. Love; did

not answer at first; the second call he answered 'aye'—the third 'No.'

WM. M. WATTS.

Sworn and subscribed before me, December 14, 1838.

F. FRALEY, Chairman.

Mr. SMITH again—Question by Mr. Sterrett—Is acquainted with Mr. McCahen, but did not see him conduct Mr. Hopkins to the chair, my attention being chiefly directed to the organization of the House under Mr. Cunningham, in order to see that it was done properly. After I made my protest against reading the returns as furnished by Mr. Pray, Mr. Hopkins made the motion that both returns be read, the question was put. I think I made a second protest against it, and hoped that those who thought as I did would not vote at all upon the question.

TOS. S. SMITH.

Affirmed and subscribed before me, December 14, 1838.

F. FRALEY, Chairman.

Mr. WATTS, again called—Thinks, on recollection, that the paper from which he called the names, was obtained from Mr. Zeilin.

WM. M. WATTS.

Sworn and subscribed before me, December 14, 1838.

F. FRALEY, Chairman.

Gentlemen of the Committee—We have been politely invited to appear before this committee, to furnish them with any information we may possess on the inquiry now under consideration. Whilst we cheerfully comply with this invitation, we wish it to be understood that our appearance here is not to be considered as an acquiescence in the constitutional right of the Senate to institute such an inquiry, an inquiry which seems to involve the power to determine on the right of membership in the House of Representatives. By your notes to us, it seems you are appointed for the purpose of investigating the facts in relation to the bodies claiming to be the House of Representatives. We were both present in the Hall of the House of Representatives on Tuesday the 4th inst. during the whole time the House was in session, and we will give the committee the facts which recur to our recollection.—Mr. Hill, from Westmoreland, gave information that at eleven o'clock the members would proceed to organize the House. At eleven o'clock the same gentleman made the usual motion that the Clerk should read the several returns of the election, which was agreed to.—The Secretary of the Commonwealth appeared in the Hall, and stated that he had the honor to present the official returns of the election, and walked up to the Speaker's table and laid the returns on it. The Clerk went to the table and got them. A motion was then made that the returns should be read, which was carried. The Clerk then proceeded to read the returns in the usual order, commencing with the city of Philadelphia. He then took up the return of the county of Philadelphia, which was the next in order. Mr. Pray, from the county of Philadelphia, among other things inquired of the Clerk how many judges had signed the return. The Clerk informed him that it was signed by W. G. Contow and five others. Mr. Pray then said that the return in the hands of the Clerk was not the legal return; that it was signed by a minority of the judges, which copy was certified by the Prothonotary of the county of Philadelphia, and which was the legal return; and handed such certified copy to the Clerk. Mr. Smith, of the city of Philadelphia, objected to the reception of this certified copy as evidence stating his reasons. A motion was then made and carried, that both returns should be read. The Clerk then read both returns from the county of Philadelphia, and all the other returns from the different counties.

Immediately after the returns were read, and before the Clerk called the names of the members elected, so as to ascertain who were present, and which has been the uniform practice, Mr. Stevens rose and after some remarks made a motion that the members proceed to the appointment of tellers, and to the election of Speaker. The members named in his motion for tellers, were Messrs. Watts and Zeilin. In the course of his remarks, he said he did not expect that gentlemen who did not think with him, would vote on his proposition. That if it should happen that two Speakers were elected, there would be room enough on the platform for both, and that the question could or would be determined by the proper tribunals of the country. When he had concluded his remarks, he put his motion, saying, "Gentlemen, are you agreed?" and immediately pronounced it agreed to. The Clerk proceeded to call over the names of the members, fifty six answering to their names. After this, a motion was made that the members present proceed to the election of Speaker, which motion was put by the Clerk and carried; and it was agreed that the Clerk should act as tellers. After Mr. Stevens pronounced his motion agreed to, Messrs. Watts and Zeilin took the Speaker's stand and called over the names of the members, some voting for T. S. Cunningham, some answering here, and others not answering. This in some degree interrupted the Clerk in the customary busi-