Chapter XI.

ELECTORATES IN RECONSTRUCTION.[1]

386. In the Fortieth Congress Members-elect from States lately in secession were not admitted until a committee had examined their credentials, qualifications, and the status of their constituencies.—

In 1868, at the time of the reconstruction of the State governments of a number of the States recently in secession, persons claiming to be elected Members of the House appeared from the States of Arkansas, Florida, North and South Carolina, Alabama, Louisiana, and Georgia.[3] These persons bore credentials signed, some by military authorities in command of the districts comprising the State,[4] others signed by the president of a constitutional convention.[5] The House decided in these cases to refer the credentials to the Committee on Elections before the Members-elect were sworn in,[6] in accordance with the precedent in the preceding Congress.

The Committee on Elections reported in these cases as to whether or not the credentials were "in due form of law" and whether or not the States had conformed to the laws of Congress.[7] Also, they reported as to the qualifications of the Member-elect, especially as to whether or not his disabilities had been removed so that he might take the oath.[8]

[1] See also cases of Houston *v.* Broocks (sec. 644 of this volume and Jacobs *v.* Lever, Myers *v.* Patterson, and Prioleau *v.* Legare (sec. 1135 of Vol. II).

[2] See also cases of Segar (sec. 318 of this volume) and Jones *v.* Mann and Hunt *v.* Menard (sec. 326 of this volume).

[3] For references to these cases see p. cccxvi of the Index to the Congressional Globe, second session Fortieth Congress.

[4] Members of the House protested against Members "sent here by military force acting under a brigadier-general," second session Fortieth Congress, Journal, p. 922; Giobe, p. 3441.

[5] So Members from Alabama, Globe, p. 4294.

[6] Journal, p. 917; Globe, p. 3396.

[7] Globe, p. 4215.

[8] Globe, p. 4254.

387. In 1869 the House provided by resolution that the credentials of persons claiming seats from certain States should be examined by a committee before the oath should be administered.

The credentials of Members-elect who appear after the organization are presented but are not examined by a committee before the oath is administered, unless there be objection.

In 1870 the House declined to exclude a Member-elect for alleged disloyalty in giving utterance to words indicating contempt for the Government.

On December 6, 1869,[1] at the beginning of the second session, after the roll of Members-elect had been called by States and the presence of a quorum had been announced, the Speaker invited Members-elect with credentials, whose right to seats were unchallenged, to come forward and take the oath.

Mr. Halbert E. Paine, of Wisconsin, said that, as there was no law authorizing the Speaker, Clerk, or other officer to inspect credentials presented after the House was once organized, it seemed most proper that all credentials be referred to the Committee on Elections for examination before the bearers should be sworn in.

The Speaker[2] said the usage had always been, when there was no objection, to allow a Member to be sworn in without any further ceremony. The Chair did not propose to administer the oath to any to whom objection might be made.

Members-elect to whom there was no objection were then sworn in.

Later in the day Mr. Paine presented the credentials of William Milnes, Jr., claiming a seat as a Member from the Sixth district of Virginia, and at the same time offered the following resolution, which was agreed to by the House:

Resolved, That all credentials of persons claiming the right to represent the people of Virginia and Mississippi in this House be referred, when presented, to the Committee of Elections.

In accordance with this resolution credentials were presented and referred, the oath not being administered pending the investigation.

On January 27, 1870,[3] Mr. Paine submitted from the committee a report finding that six of the nine persons who presented certificates from Virginia, were entitled to be sworn in, and submitted a motion that the oath be administered to them. Objection being made to one of the six, Mr. Charles H. Porter, he stepped aside until the oath was administered to the others. The question recurring as to administering the oath to Mr. Porter, Mr. Fernando Wood, of New York, presented the record of a trial by a military commission whereby Mr. Porter had been punished, after conviction, for declaring that—

This Government is all a———humbug from beginning to end, etc.

After debate the motion to administer the oath to Mr. Porter was agreed to, but immediately Mr. William S. Holman, of Indiana, moved to reconsider. Thereupon a debate arose, partisan in nature, which reviewed the exclusion of the Kentucky Members on charges of disloyalty. Finally the motion to reconsider

[1] Second session Forty-first Congress, Journal, pp. 22, 23; Globe, pp. 9, 15.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Globe, pp. 822–828.

was laid on the table-yeas, 167; nays, 4. Thereupon Mr. Porter appeared and took the oath.

The three other claimants to seats presented cases requiring further examination, involving questions as to prima facie and final right that are considered on other pages.

388. The election case of the Georgia Members in the Forty-first Congress.

The House decided in 1869 that a person might not, by virtue of one election, sit as a Member of the House in two Congresses.

The Clerk declined to enroll claimants bearing credentials referring to an election by virtue of which the said claimants had already held seats in the preceding Congress.

Instance wherein a constitutional convention in a State undergoing reconstruction authorized the election of Members of Congress in anticipation of the sanction of Federal law.

Instance wherein, during the reconstruction period, credentials were issued to Members-elect by a military commander.

On March 5, 1869,[1] when the House of Representatives organized the names of no persons as Members-elect from the State of Georgia were included in the roll called by the Clerk.

It appeared that certain persons had appeared bearing credentials of the governor of Georgia, under seal of the State, and in due form setting forth:

Whereas the convention of the people of this State, held under the reconstruction acts of Congress, passed an ordinance dated 10th of March, 1868, which ordained that an election be held, beginning on the 20th day of April, 1868, for Representatives to the Congress of the United States; and whereas the returns made agreeably to said ordinance show that you received the highest number of votes for Representative from the Second Congressional district of this State; and whereas it is my duty under the laws of Georgia to commission the persons legally elected.

These are therefore to commission you, the said Nelson Tift, to take session in the House of Representatives of the United States in accordance with said election under said ordinance, a copy of which is hereunto annexed, and to use and exercise all and every the privileges and powers which by right you may or can do, under and by virtue of the Constitution, in behalf of this State.

This credential was dated November 24, 1868.

The ordinance, which was annexed to the credentials, provided that the persons elected at the election of April 20, 1868 (at which the constitution was voted on, and which was conducted under direction of the commanding general of the military district including Georgia)—

shall enter upon the duties of the several offices to which they have been respectively elected when authorized so to do by acts of Congress or by the order of the general commanding, and shall continue in office till the regular session provided for after the year 1868 and until successors are elected and qualified, so that said officers shall each of them hold their offices as though they were elected on the Tuesday after the first Monday in November, 1868, or elected or appointed by the general assembly next thereafter.

In the debate it was stated that while the Clerk was technically right in not putting the names of the persons on the roll, the House was not bound by so strict

[1] First session Forty-first Congress, Journal, pp. 5, 14; Globe, pp. 16–18.

technical rule. It appeared from the debate that the same persons, by virtue of the election in question, had taken seats in the preceding Congress, the Fortieth.

The House, in the perplexities caused by this state of facts abandoned a resolution providing for the swearing in of the persons named, and agreed to this resolution:

Resolved, That the credentials and papers of J. W. Clift, Nelson Tift [mentioning others], claiming seats as Members of the House of Representatives from the State of Georgia, be referred to the Committee of Elections, when appointed, with directions to report to the House whether their papers present a prima facie right to their seats.

On January 28, 1870,[1] Mr. John C. Churchill, of New York, from the Committee on Elections, submitted the report. The report first states fully the facts in connection with the case:

In November, 1867, under the reconstruction acts of Congress, members of a convention to form a constitution of the State of Georgia were elected. This convention convened on the 9th day of December, 1867, and proceeded with the only duty which, under those acts, they had to perform, and on the 11th of March, 1868, they adopted a constitution to be submitted to the people under the acts above referred to.

On the 11th of March, 1868, Congress passed an act, the second section of which reads as follows:

"SEC. 2. *And be it further enacted,* That the constitutional convention of any of the States mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution, the registered voters may vote also for Members of the House of Representatives of the United States, and for all elective officers provided for by the said constitution; and the same election officers who shall make the return of the votes cast on the ratification or rejection of the constitution shall enumerate and certify the votes cast for Members of Congress."

Under the authority of this section, although anticipating its passage, the convention on the 10th of March, 1868, adopted an ordinance which provided that an election should be held, beginning on the 20th of April, 1868, "for voting on the ratification of the constitution, and for governor, members of the general assembly, Representatives to the Congress of the United States, and all other officers to be elected as provided in the constitution." It was further provided "that the persons so elected shall enter upon the duties of the several offices to which they have been respectively elected, when authorized so to do by acts of Congress or by the order of the general commanding; and shall continue in office till the regular succession provided for after the year 1868, and until successors are elected and qualified; so that said officers shall each of them hold their offices as though they were elected on the Tuesday after the first Monday of November, 1868, or elected or appointed by the general assembly next thereafter."

General Meade was further requested by the same ordinance to cause due returns to be made, and certificates of election to be issued by the proper officers. Under this ordinance an election was held, beginning on the 20th April, 1868, at which Representatives in Congress were voted for in the several congressional districts, each voter so voting depositing but a single ballot, on which was inscribed "for Representative in Congress," with the name of the person for whom he voted. At this time there was no act of Congress in existence giving representation in Congress to Georgia, and therefore no time when, by the terms of the above ordinance, the terms of the persons so voted for could commence.

On the 25th of June, 1868, Congress passed a law which declared that Georgia should be entitled and admitted to representation in Congress when the legislature of the State should have duly ratified article fourteen of the amendments to the Constitution, and should also have given the assent of the State to certain fundamental conditions specified in the act; and the President was required, within ten days after the receipt of official intelligence of the fact, to issue a proclamation announcing the ratification by the legislature of the fourteenth amendment.

On the 1st of July, 1868, General Meade issued certificates of election to the several persons who had received a majority of votes for Representative in Congress in their respective districts, which certificate, for the First Congressional district, was in the following form:

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[1] Second session Forty-first Congress, House Report No. 16; 2 Bartlett, p. 596.

"HEADQUARTERS THIRD MILITARY DISTRICT,
"(GEORGIA, FLORIDA, AND ALABAMA.)

"From the return made to these headquarters by the boards of registration of the election held in the State of Georgia for civil officers of said State, and for Members of Congress, under the provisions of General Order, No. 40, issued from these headquarters, which election commenced on the 20th day of April and continued four days, *it is hereby certified* that it appears that in said election J. W. Clift received a majority of the votes cast for a Representative to the Congress of the United States from the *First Congressional district* in said State of Georgia.

"GEORGE G. MEADE,
''MAJOR-GENERAL, U. S. A., COMMANDING.

"ATLANTA, GA., *July 1, 1868.*"

The certificates were similar in form, with changes only of the name of the person certified to be elected.

The convention adjourned on the 11th March, 1868, the constitution providing that the general assembly should meet within ninety days of the adjournment of the convention, and annually thereafter on the second Wednesday in January, or on such other day as the general assembly might provide. This last fact is important, since it has been claimed before the committee that, under the constitution of Georgia, no election for Members of Congress could be held until the year 1870. The clause of the constitution so referred to is as follows—article 2, section 11:

The election of governor, Members of Congress, and the general assembly, after the year 1868, shall commence on the Tuesday after the first Monday in November, unless otherwise provided by law.

But this puts no limitation whatever upon the powers of the general assembly to regulate the time and frequency of elections, and, taken in connection with the general grant of power to the general assembly (article 3, section 5, 1) to pass any law consistent with the constitution they might deem necessary to the welfare of the State, gave them full control of the subject; and the convention having required the general assembly to meet within ninety days of their own adjournment, and also on the second Wednesday of the following January, the fullest opportunity was given to the latter to provide by further legislation, if necessary, for the proper representation of the State in Congress.

On the 8th of July, 1868, the general assembly of Georgia organized, and soon after ratified the fourteenth amendment and assented to the fundamental conditions mentioned in the amendatory reconstruction act of June 25, 1868; and the President thereupon, on the 27th day of July, 1868, issued his proclamation of the fact of such ratification. The Members-elect from Georgia thereupon, in July, 1868, presented their certificates of election received from General Meade, and, so far as eligible, were thereon admitted to seats in the Fortieth Congress.

Afterwards, in November, 1868, the governor of the State issued commissions to each of these parties, based upon the same election.

The report goes on to say that the commission of the governor as evidence of the election is unauthorized, General Meade having been the only person authorized by the ordinance to issue certificates of election. The commission issued by the governor of Georgia referred to the same election as did the certificate issued by General Meade and conferred no additional powers. By the election of April 20, 1868, Georgia became entitled to representation immediately upon compliance with certain conditions. Those conditions were complied with in time for the Representatives to be admitted to the Fortieth Congress. It was absurd to say that the right to immediate representation would be satisfied by admission to the Forty-first Congress. The committee concludes:

The action of the persons elected, as well as of the House, was in entire harmony with this view. Immediately upon the compliance of Georgia with the required conditions, their members presented themselves and the House received them as Representatives from that State.

It is too late for these claimants to deny that their election entitles them to sit in the Fortieth Congress. Their own action has estopped them from such denial, and unless they can show themselves entitled by the election of April 20, 1868, to hold for two terms the force of their election is exhausted.

The action of the people in voting for them as Representatives in Congress, and their certificates of election as such Representatives, have been fully answered by admitting them as such Representatives to the Fortieth Congress. Nor was it a matter of choice with these men whether they should present themselves for admission to the Fortieth or to the Forty-first Congress. By the ordinance of the convention under which this election was held, and the law of Congress of June 25, 1868, they were to enter upon the duties of their office whenever the State of Georgia had complied with the conditions mentioned in the last-mentioned act. These conditions were complied with during the following month of July, 1868, and therefore it became the duty of these men to enter upon the duties of the office to which they had been chosen. This they did, and became Members of the House of Representatives of the Fortieth Congress, and acted as such during the closing days of the second session of that Congress and for the remainder of the term of its existence.

Having taken their seats as Members of the Fortieth Congress, it was not in the power of the convention of Georgia to extend their term so as to include the Forty-first Congress. The office of Representative to the Fortieth Congress is entirely distinct from that of Representative in the Forty-first Congress, and made so by the Constitution of the United States.

It is not pretended that there was anything in the conduct of the election of April 20, 1868, or in the action of the voters, which indicated a purpose to choose for more than a single Congress, and the ordinance of the convention can not affect the result. Indeed an examination of the ordinance will show that it was the State officers, and not Members of Congress, the duration of whose offices was attempted to be regulated by that act.

The conclusion of the committee, therefore, is that the force of the election of April 20, 1868, Was exhausted when these gentlemen were admitted Members of the Fortieth Congress, and they therefore recommend the adoption of the following resolution:

"*Resolved*, That the claimants to seats in the Forty-first Congress of the United States from the State of Georgia, under the election held in that State on the 20th day of April, 1868, are not entitled to such seats."

On January 28, 1870,[1] the report was explained, but not opposed, and the resolution was agreed to without division.

389. The Senate election case of Jones and Garland v. McDonald and Rice, from Arkansas, in the Fortieth Congress.

A State having been in secession, the Senate admitted as Senator the person chosen after the State had conformed to conditions prescribed by law, and refused to admit one chosen prior to such conformity.

Instance wherein the Senate gave immediate prima facie effect to informal credentials, although other claimants presented credentials technically conforming to law.

Instance wherein the Senate admitted persons chosen before Congress had admitted a reconstructed State to representation.

From the outbreak of the civil war until 1868 the State of Arkansas was without representation in the Senate of the United States. On November 24, 1866, the legislature of Arkansas elected as Senators John T. Jones for the vacancy in the term beginning March 4, 1865, and Augustus H. Garland for the term commencing March 4, 1867. Neither of these Senators-elect were admitted; but by the act of July 19, 1867,[2] Congress declared the governments then existing in several Southern States, including Arkansas, illegal. Previously, by the law of March 2, 1867,[3] Congress had prescribed the conditions on which the States lately in secession might be read-

[1] Journal, p. 222; Globe, pp. 853, 854.

[2] 15 Stat. L., p. 14.

[3] 14 Stat. L., p. 428.

mitted to representation, but leaving it for a future law to effect such readmission. Arkansas proceeded, under the law of March 2, 1867, to form a new State government, and the legislature of that new government on April 15, 1868, chose two Senators, Alexander McDonald for the term beginning March 4, 1865 (that for which Mr. Jones had been elected), and Benjamin F. Rice for the term beginning March 4, 1867 (that for which Mr. Garland had been elected). But it was not until June 22, 1868,[1] that Congress by law formally admitted Arkansas "to representation in Congress as one of the States of the Union." So Messrs. McDonald and Rice were chosen before Arkansas was actually admitted.

On June 23, 1868,[2] the day after the act of admission had become a law, Mr. John M. Thayer, of Nebraska, presented the credentials of Messrs. McDonald and Rice in the Senate. They were in form as follows:

STATE OF ARKANSAS, *to wit:*

The general assembly of the State, assembled under the provisions of section 2 of Article V of the constitution as adopted by the convention on the 11th day of February, A. D. 1868, a copy of which is hereto annexed, having, on the 15th day of April, A. D. 1868, in pursuance of an act of Congress entitled "An act to regulate the times and manner of holding elections for Senators in Congress," approved July 25, 1866, chosen Benjamin F. Rice a Senator of the United States for the term ending on the 4th day of March, A. D. 1873.

Therefore we, John N. Sarber, president pro tempore of the senate, and John G. Price, speaker of the house of representatives, do hereby certify the same to the Senate of the United States.

Given under our hands, this 15th day of April, A. D. 1868.

JOHN N. SARBER,
President Senate pro tempore.
JOHN G. PRICE,
Speaker House of Representatives.

As soon as these credentials had been read, Mr. Garrett Davis, of Kentucky, offered the credentials of Messrs. Jones and Garland, which were in regular form, signed by "Isaac Murphy, governor," attested by the seal of the State, and countersigned by the secretary of state.

Mr. Davis claimed that this title was the older and, from the standpoint of prima facie authority, the better. He also contended that constitutionally Messrs. Jones and Garland had the better title; and proposed a reference of all the credentials to the Judiciary Committee for investigation.

Mr. Davis's proposition was not taken seriously by the majority of the Senate, who considered the reconstruction legislation as conclusive on this point.

But Mr. Lyman Trumbull, of Illinois, suggested two questions on which there was extended debate:

(1) That the credentials of Messrs. Rice and McDonald were signed only by the president pro tempore of the senate and speaker of the house, whereas the law of July 25, 1866[3] provided:

That it shall be the duty of the governor of the State from which any Senator shall have been chosen as aforesaid to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the secretary of state of the State.

[1] 15 Stat. L., p. 72.

[2] Second session Fortieth Congress, Globe, pp. 3384–3389.

[3] 14 Stat. L., p. 244.

(2) That Messrs. Rice and McDonald had been chosen before Congress had admitted Arkansas to representation.

As to the first point, it was explained that the governor had not given credentials because the legislature did not recognize the old governor and the new governor was not in possession of the office and was simply a governor-elect. While admitting the informality of the credentials, the general opinion of the Senate seemed to concur in the views expressed by Messrs. Oliver P. Morton, of Indiana, and Reverdy Johnson, of Maryland, that the law was merely directory as to the governor and that the authentication of the credentials in this case was sufficient. Mr. Johnson, however, thought it well that the credentials should be referred to a committee, that a general rule might be established for the future.

As to the second point, Mr. Trumbull recalled that it had been an established practice for new States to organize and elect Senators before their admission to the Union. And when Congress subsequently recognized the State government it had been construed to have relation back to the time when the organization took place and the Senators had been admitted to their seats. Mr. Johnson, in support of this view, recalled the case of California.

Mr. Davis, insisting on his view that Messrs. Jones and Garland were the only constitutionally elected Senators, moved that the credentials be referred to the Judiciary Committee; but the motion was negatived without division.

Then the motion that Messrs. Rice and McDonald be sworn was agreed to; and they appeared and took the oath.

390. The Senate election case of Marvin v. Osborn, from Florida, in the Fortieth Congress.

A State having been in secession, the Senate admitted as Senator the person chosen after the State had conformed to conditions prescribed by law and refused to admit one chosen prior to such conformity.

Instance wherein immediate prima facie effect was given to credentials of a Senator-elect from a reconstructed State.

On June 30, 1868,[1] in the Senate, Mr. Timothy O. Howe, of Wisconsin, presented the credentials of Thomas W. Osborn, as Senator from Florida to fill the term expiring on March 3, 1873. Florida had been without representation since the secession of the State; but Congress, by the act of July 25, 1868, had provided that Florida and certain other secession States should be admitted to representation when they should have complied with certain conditions.

Mr. Howe also presented, as evidence that the State had complied with the conditions, her ordinances ratifying the thirteenth and fourteenth amendments to the Constitution of the United States.

The credentials of Mr. Osborn showed his election on June 18, 1866, and that it was in accordance with the act of July 25, 1866. The State had completed the ratification of the amendments on June 11, 1868, seven days prior to Mr. Osborn's election.

While Mr. Osborn's credentials were under consideration Mr. Jonathan Doolittle, of Wisconsin, offered credentials signed by David S. Walker as governor of Florida,

[1] Second session Fortieth Congress, Globe, pp. 3598–3607.

dated November 30, 1866, and showing the election of William Marvin as Senator on November 28, 1866, a considerable time before the ratification of the amendments.

Mr. Doolittle contended that Florida had never been out of the Union; that as soon as the power of the secession armies vanished she became entitled to representation again, and that as Mr. Marvin had always been a loyal man he should be seated. For this reason Mr. Doolittle opposed the pending motion, which was that the oath be administered to Mr. Osborn.

A considerable diversity of opinion arose as to whether the case should not be referred to the Judiciary Committee for examination before the administration of the oath. This appears not to have been because Mr. Marvin's claim was generally treated as serious, but because of doubts as to whether the act of the legislature of Florida in ratifying the amendments had been properly conducted and authenticated.

Finally, by a vote of yeas 34, nays 6, the motion that Mr. Osborn be permitted to take the oath was agreed to.

391. The Senate election case of Whiteley and Farrow v. Hill and Miller, from Georgia, in the Fortieth and Forty-first Congresses.

The Senate declined to give prima facie effect to credentials impeached by charges that a State was not fulfilling in good faith the conditions of reconstruction.

The Senate finally seated persons elected by a legislature in a reconstructed State, although after the intervention of Congress other persons had been elected.

Instance wherein a special law was passed prescribing the form of oath to be taken by a Senator-elect.

On December 7, 1868,[1] in the Senate, Mr. John Sherman, of Ohio, presented the credentials of Joshua Hill, Senator-elect from the State of Georgia, to serve the unexpired term ending March 4, 1873.

At this time Georgia was without representation in the Senate. By the act of Congress of June 25, 1868, the provisional governor of Georgia, Rufus B. Bullock, appointed as such on July 4, 1868, by General Meade, military commander of the district, called a provisional legislature, which convened on July 20. Mr. Hill was elected on July 28.

As soon as Mr. Hill's credentials were read to the Senate, Mr. Charles D. Drake, of Missouri, objected to the administration of the oath of office, and moved that the credentials be referred to the Committee on the Judiciary. The reason for the objection appeared in two papers presented to the Senate at this time the first, a letter from Governor Bullock, alleged that certain persons lacking the qualifications of loyalty had been permitted to take seats in the legislature, contrary to the letter and spirit of the law of Congress; and second, a memorial of colored citizens of Georgia, reciting that the white members of the legislature had expelled from that body 29 duly elected members because they were persons of color and, as was claimed, ineligible to office under the constitution and laws of Georgia. It appeared that this act of expulsion occurred after Mr. Hill had been elected Senator, and Mr. Sherman urged that it should not be charged against him.

[1] Third session Fortieth Congress, Globe, pp. 1–5.

But Mr. John M. Thayer, of Nebraska, and others urged that the neglect of the legislature to purge itself of disloyal men cast suspicion on the effectiveness of the reconstruction of the State, and that Senators should not be admitted while this doubt existed, in spite of the fact urged by Mr. Sherman that Georgia had been recognized by the Senate and House of Representatives as a State in the Union.

On December 10,[1] on motion of Mr. Sherman, the credentials were referred to the Committee on the Judiciary, no attempt being made to have the oath administered to Mr. Hill at this time.

On January 11, 1869,[2] Mr. Lyman Trumbull, of Illinois, presented the credentials of H. V. M. Miller, Senator-elect from Georgia, to fill the unexpired term commencing March 4, 1865. These credentials were referred to the Judiciary Committee without question, no proposition to administer the oath being made.

On January 25[3] Mr. William M. Stewart, of Nevada, presented the report of the committee on the case of Mr. Hill. Apparently Messrs. George F. Edmunds, of Vermont, and Benjamin F. Rice, of Arkansas, concurred with Mr. Stewart in the report, while Messrs. Roscoe Conkling, of New York, and Frederick T. Frelinghuysen, of New Jersey, concurred in the conclusion of the report, that Mr. Hill should not be seated. Mr. Lyman Trumbull, of Illinois, submitted minority views favorable to the seating of Mr. Hill, and the remaining member of the committee, Mr. Thomas A. Hendricks, of Indiana, dissented from the majority conclusion, but did not present views.

In the report of the majority the condition of affairs in Georgia is thus set forth:

> On the 21st of May, 1868, the President transmitted to Congress a proposed constitution for the State of Georgia, which had been framed by a convention assembled under the reconstruction acts of Congress and ratified by the people. On the 25th June following Congress passed an act which, among other things, provided for the admission of Georgia to representation upon compliance with certain conditions therein named, the most important of which was that the legislature of Georgia should duly ratify the amendment to the Constitution of the United States known as the fourteenth amendment. The act further provides that after compliance with the required conditions "the officers of said State duly elected and qualified under the constitution hereof shall be inaugurated without delay; but no person prohibited from holding office under the United States or any State by section 3 of the proposed amendment to the Constitution of the United States known as article 14 shall be deemed eligible to any office in said State unless relieved from disability as provided in said amendment."
>
> The obvious design of this provision was to prevent the new organization from falling under the control of enemies of the United States, so as to defeat the reconstruction of the State.
>
> The right of Mr. Hill (if regularly elected) to a seat in the Senate depends upon three important considerations:
>
> First. Did the legislature of Georgia, regularly organized in accordance with the Constitution of the United States, the laws of Congress, and the constitution of Georgia, duly ratify the fourteenth amendment and comply with the various conditions imposed by the act of June 25, 1868?
>
> Second. Have the legislature and people of Georgia, subsequent to such compliance with said acts of Congress, committed such acts of usurpation and outrage as to place the State in a condition unfit to be represented in Congress?
>
> Third. Whether, on the whole case, taking the action of Georgia both before and since the pretended ratification of the fourteenth amendment, a civil government has been established in that State which Congress ought to recognize?
>
> These questions must be answered by the law and the facts.

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[1] Globe, p. 43.

[2] Globe, p. 273.

[3] Globe, p. 568, Senate Report No. 192, third session Fortieth Congress.

After reviewing the failure of the legislature to purge itself of disloyal members, the report continues:

Your committee are of opinion that the act of June 25, 1868, which required that the constitutional amendment should be duly ratified, must be held to mean that it must be ratified by a legislature which has in good faith substantially complied with all the requirements of law providing for its organization. It is true that, after this pretended investigation by the two houses of the eligibility of their members, the district commander recognized the validity of their proceedings and permitted the State officers to be inaugurated and the State government to go into operation. On the 21st day of July the legislature passed a resolution of ratification of the fourteenth amendment and the other resolution required by the act of June 25, 1868.

On the 28th of July, 1868, the legislature went into joint convention for the election of United States Senators. Joshua Hill received 110 votes; Joseph E. Brown, 94 votes, and A. H. Stevens, 3 votes, whereupon Mr. Hill was declared elected United States Senator for the term ending March 3, 1873.

It is quite probable that Mr. Hill received votes of persons who were not qualified to hold seats in the legislature more than sufficient to constitute his majority and secure his election, but your committee do not propose to investigate that question. The election and qualification of members of the legislature, where the existence of any legislature authorized to act as such is not involved, can not be inquired into by the Senate in determining the right of a Senator to his seat. Your committee holds that the question involved in this case is not whether persons not entitled to seats in the legislature were received by that body and allowed to vote upon the election of a Senator, but whether the body assuming to be the legislature violated the conditions upon which it was allowed to organize by permitting disloyal persons to participate in its proceedings. It may be contended that although the matters hereinbefore set forth constitute a failure on the part of the State of Georgia to comply in every respect with the reconstruction acts, yet Congress ought to waive these slight departures and admit their representatives. But an examination into the subsequent proceedings of the legislature of Georgia, and the disorganized condition of society in that State, leads your committee to the conclusion that all these violations of law were in pursuance of a common purpose to evade the law and resist the authority of the United States.

The report next recites the expulsion of the colored members of the legislature, and says:

Your committee are of opinion that under the constitution of Georgia there is no distinction in the right to hold office on account of race or color, and they are quite confident that such was the opinion of Congress at the time it approved that constitution.

This act of injustice and oppression denied the right of representation of a whole race, constituting nearly one-half of the people of Georgia. It will not be contended that there is no power in this Government to restrain in some form an outrage of this character. It certainly furnishes a strong reason why Congress should not at this time overlook the irregularities in the organization of the legislature of Georgia and admit her Senators to representation. And this is not all. Your committee have examined the official reports of the various officers connected with the Freedmen's Bureau in Georgia, and find reported 336 cases of murders and assaults with intent to murder upon colored persons by the whites, from January 1, 1868, to November 15 of same year. For all of which there has been no legal redress and scarcely any effort whatever on the part of the authorities to punish the criminals. And it is stated by these officers that they are unable to report fully as to the number and character of these outrages on account of intimidation of witnesses, which is practiced by the perpetrators of crime. Your committee have no source of official information as to outrages committed upon loyal whites, but it is represented by various and numerously signed petitions and memorials from the loyal people of Georgia that they are constantly exposed to violence, and are without protection of law. It is a matter of public notoriety that loyal white men are persecuted, murdered, and driven from their homes. Several members of the legislature have been compelled to take refuge at the capital of the State where the national troops are stationed to avoid the violence of the enemies of the United States. The unlawful and vindictive conduct of the legislature tend to confirm these statements and reports, and exclude all hope that the new civil government will afford adequate protection to life and property. Since the withdrawal of the military, crime has greatly increased while punishment for crime has diminished.

And the report concludes:

Wherefore your committee feel called upon to recommend that Mr. Hill be not allowed to take a seat in the Senate for the reason that Georgia is not entitled to representation in Congress, and submit the accompanying resolution.

"Resolved, That Joshua Hill, claiming to be Senator-elect from Georgia, ought not now to be permitted to take a seat in this body."

Mr. Trumbull favored the seating of Mr. Hill, saying in minority views:

The undersigned, being unable to agree with the majority of the committee in their report upon the credentials of Joshua Hill, claiming to have been duly elected and entitled to a seat in the Senate from the State of Georgia, begs leave to present the reasons for his dissent. That Hill possesses all the qualifications for a Member of the Senate of the United States required by the Constitution; that he is one of the few prominent men residing in a rebel State who remained true to the Union during the war; that he is now and has been at all times thoroughly loyal to the Union; that he is in every respect personally unobjectionable; that he was duly elected by the legislature of Georgia, and that his credentials are in due form is not questioned by anyone. If he is not entitled to his seat, it must be either because the State of Georgia was not in a condition to entitle her to representation at the time of his election or because the body which elected him was not the legislature of that State.

The former of these propositions, whether Georgia was or is in a condition to entitle her to representation, is not a question for the Senate to decide. The unfortunate disagreement which has existed for some years between the President and Congress has, in part, been owing to a disagreement upon this very point, the President insisting that it was for each House of Congress to determine for itself in the admission of Members whether a State was entitled to representation, and Congress insisting that it was for Congress to determine in the first instance whether a State was entitled to representation, and that question being affirmatively settled it was then for each House to judge for itself of the election, returns, and qualifications of its own Members. This controverted point was settled by Congress in March, 1866, by the passage through both Houses of the following concurrent resolution:

"Resolved by the House of Representatives (*the Senate concurring*), That, in order to close agitation upon a question which seems likely to disturb the action of the Government, as well as to quiet the uncertainty which is agitating the minds of the people of the eleven States which have been declared to be in insurrection, no Senator or Representative shall be admitted into either branch of Congress from any of said States until Congress shall have declared such State entitled to such representation."

The reconstruction acts, since indorsed by the people at a popular election, declare that "until the people of said rebel States shall be by law—not by the action of each House—admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only;" which is equivalent to a declaration that when admitted to representation by law they shall be no longer provisional.

The supplementary act of March 23, 1867, declares that when the requirements of the reconstruction acts shall have been complied with by any of the rebel States in the formation of a constitution, and "said constitution shall be approved by Congress, the State shall be declared entitled to representation, and Senators and Representatives shall be admitted therefrom, as therein provided." This action of Congress, indorsed by the people, determined that neither House of Congress was authorized by itself to admit Senators or Representatives from any of the rebel States till Congress should determine by law that such State was entitled to representation. The converse of the proposition was also equally determined—that it would be the duty of each House to admit duly elected and qualified Senators and Representatives from each of said States whenever Congress shall have determined by law that such State was entitled to representation.

After quoting the act of June 25, 1868, and other documents, Mr. Trumbull continues:

The foregoing extract, together with copies of official correspondence between Major-General Meade and General Grant, hereto attached, establish the fact that the legislature of Georgia fully complied with the requisitions of the act of June 25, 1868, and the fact of her ratification of the fourteenth amendment was duly proclaimed by the President, as also appears by a copy of the proclamation, hereto attached.

Congress having decided that Georgia was entitled to representation through the State government organized under the reconstruction acts, on complying with the conditions therein named, it is not competent for either House, now that the conditions have been complied with, to refuse admission to Members on the ground that the State is not entitled to representation. For either House to do so would be for such House to set aside a solemn act of Congress, passed by both Houses, and to repudiate the principle on which it differed with the President and went before the people in the popular elections. The House of Representatives, conforming to the law of Congress, has admitted to seats the Representatives from Georgia against whom no personal objection was made, without any further inquiry than whether Georgia had complied with the conditions of the act of June 25, 1868. No attempt was made in that body to revise the decision of Congress.

The assumption that the constitutional amendment was not adopted in good faith is not sustained by a particle of evidence before the committee, and is contradicted by the official report of Governor Bullock to General Meade, by the orders of General Meade, and those emanating from the General in Chief, by the proclamation of the President, made in pursuance of law, by the action of the House of Representatives in passing upon the admission of Members to that body, and by the acquiescence of all the departments of Government from July until now. If one branch of Congress is at liberty to deny a State representation on the ground that it did not act in good faith in agreeing to the conditions prescribed by Congress, what is to prevent either House of any other Congress, acting on a like assumption, from denying admission to Members from any other of the reconstructed States? It is well known that a large political party in the country believe the reconstruction acts unconstitutional. Should that party hereafter obtain ascendency in either House of Congress, is it to be at liberty to overturn the State governments which have been established in pursuance of law and to quote as a precedent the action of the Senate in this case? When are we to have peace and civil governments established in the late rebel States under such a policy? The question has been asked, If one person disqualified by the fourteenth amendment could be permitted to act as a member of the Georgia legislature, why not all; and if all, would it be pretended that it was a legislature organized in accordance with the reconstruction acts? Probably not; and the same question, with the same force, may be asked in reference to Congress or any other legislative body in the land. If a disqualified person or several such were permitted to act as Members of Congress or a State legislature, does anybody pretend that the action of the body would be vitiated thereby; and yet who would not admit that if a body of men were to assemble and undertake to act as the Congress or the legislature of a State, all of whom were disqualified from acting as such, that their action would have any validity? No such case is to be presumed, and no legislative body is justified or safe in basing its action on supposititious cases which never have and are not likely ever to occur. No such state of facts is presented in the case of Georgia. Not one in ten of the members of the senate, after deducting those from whom the disabilities had been removed by Congress, and not one in fifty of the members of the house were found disqualified by even the minority of the committee who investigated this subject, and each house decided all its members to be qualified. The constitution of Georgia, which was accepted by Congress, like that in all the other States, and like the Constitution of the United States, in regard to Congress, leaves to each house the exclusive right to judge for itself of the election and returns of its own members, and that judgment, when pronounced, is conclusive everywhere. There was not a shadow of anything deserving the name of evidence before the committee to show that either house of the legislature of Georgia acted corruptly or fraudulently in passing upon the right of members to their seats under the fourteenth amendment.

The Senate has no right, in the opinion of the undersigned, to revise the action of Congress, disregard its laws, and refuse Hill his seat, because in its opinion Georgia is not entitled to representation, when Congress has decided otherwise, and the Executive and the General in Chief have acted on that decision. It being admitted that Hill is entitled to his seat if Georgia is entitled to be represented in the Senate, and it being shown that Georgia has been declared by law to be entitled to representation on certain conditions, which are shown to have been complied with, the conclusion would seem to be irresistible that Hill was entitled to take his seat. That it is competent for the Senate, in passing upon the elections, returns, and qualifications of its Members, to inquire whether the body by which a Senator was elected was the legislature of the State is not disputed; but it is not pretended that Georgia had any other legislative assembly than the one which elected Mr. Hill claiming to be a legislature. The legislative body

which elected him was the one which was convened by the governor in pursuance of an act of Congress; the one which ratified the fourteenth amendment to the Constitution as proclaimed both by the President and Secretary of State, in accordance with the requirements of law; and the one, and the only one, which has been elected and assembled in said State under the constitution formed in pursuance of the reconstruction acts and approved by Congress. The legislature of Georgia, under its constitution, consists of 44 senators and 175 representatives, and the complaint is, not that the persons properly chosen and qualified would not and did not constitute the legislature, but that "there were a number of persons holding seats in both branches of the legislature that were and are not eligible under the fourteenth constitutional amendment."

Each house appointed committees, who investigated the question of the eligibility of the members of their respective houses under that amendment; and, on their report, each house decided that all its sitting members were entitled to seats. Whether these decisions were correct or not is not material to Hill's right to a seat, as it is not pretended, even by the minority of the committees appointed to investigate, that more than 4 senators out of 44, omitting those whose disabilities had been removed by act of Congress, and 3 representatives out of 175, were disqualified by the fourteenth amendment.

No evidence was taken by the Judiciary Committee to ascertain how many or whether any of the members of either house were ineligible.

The statements of letter writers and memorialists can not surely be treated as evidence upon which to overthrow a State government. The only reliable information the committee had on that subject is contained in the official report of Major-General Meade and the journal of the legislature, as published in a newspaper. From these it appears that only 4 senators and 3 representatives were complained against by any one in the legislature as disqualified by the fourteenth amendment.

If it were admitted that the decision of each house was wrong in regard to the eligibility of the members complained against it would not vitiate the proceedings of the legislature.

As to the expulsion of the colored members, Mr. Trumbull said:

Another objection urged against Mr. Hill's right to a seat is the fact that the legislature of Georgia unjustly denied the right of certain colored members to seats. However unjust this denial may have been, it did not take place till more than a month after Hill's election. He was elected July 28, and the colored members participated in all legislation till September 3.

It is difficult to perceive how an act subsequent to the election could affect its validity. If the legislature was properly organized when it elected Hill, the fact that it subsequently became disorganized ought not to affect his election.

On February 17 Mr. Stewart, from the Judiciary Committee, submitted a report against the admission of Mr. Miller, whose case was similar to that of Mr. Hill.

The Senate did not decide either of these cases at this session.

On March 9, 1869,[1] at the beginning of the next Congress, the credentials of Messrs. Hill and Miller were again referred to the Judiciary Committee, and on March 17, 1869, Mr. Trumbull reported from that committee the credentials, with the recommendation that they lie on the table until action should be taken on a bill to enforce the fourteenth amendment and the laws of the United States in the State of Georgia and to restore to that State the republican government elected under its new constitution.[2] Mr. Trumbull said he was opposed to the recommendation of the committee, and thought the credentials should be acted on at once. But no further action was taken at this session of Congress.

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[1] First session Forty-first Congress, Globe, pp. 31, 102.

[2] Such a law was passed and approved December 22, 1869 (16 Stat. L., p. 59), and provided for summoning the legislature and testing their loyalty by oath, and also forbade the exclusion of members because of color.

At the next session, on February 14, 1870,[1] the credentials of Messrs. Miller and Hill were again taken from the files and referred to the Judiciary Committee.

On July 15, 1870,[2] Mr. Stewart presented the credentials of Richard H. Whiteley, elected to fill the term for which Mr. Miller was a claimant, and of Henry P. Farrow, elected to fill the term for which Mr. Hill was a claimant. These credentials were laid on the table.

On December 13, 1870, at the next session, the credentials of Messrs. Whiteley and Farrow were referred to the Committee on the Judiciary, and on January 23, 1871,[3] Mr. Trumbull submitted a report from that committee. Five members, Messrs. Trumbull, Edmunds, Conking, Matt H. Carpenter, of Wisconsin, and Allan G. Thurman, of Ohio, concurred in the report. Two, Messrs. Stewart and Rice, signed minority views.

Messrs. Farrow and Whiteley had been elected in 1870 by the same legislature that had elected Messrs. Hill and Miller in 1868. But between the two acts the legislature had been purged in accordance with the terms of the act of Congress of December 22, 1869, disloyal members being excluded and the wrongfully excluded colored members being restored. The question before the Judiciary Committee in this instance was whether Messrs. Hill and Miller were to be seated, or Messrs. Farrow and Whiteley. The majority of the committee decided in favor of seating Mr. Hill, and found that Mr. Miller would be entitled to a seat when his disabilities should be removed.

The report of the committee recites the history of reconstruction in Georgia, and gives the details as to the purging of the legislature, quoting from a report of the Senate Judiciary Committee to show that steps unwarranted by law were taken in the course of that process. The history of the elections of the two sets of Senators is also given, with conclusion as follows:

> The general assembly was organized in July, 1868, in prima facie accordance with the constitution of the State, the reconstruction acts of Congress, and the orders of the military department. It complied in form with all the requirements necessary to entitle the State to representation in Congress, and Members were accordingly admitted into the House of Representatives of the United States in 1868. Whether either or both houses of the general assembly of Georgia admitted persons to sit as members in their respective bodies who were disqualified by the third section of the fourteenth article of the Constitution was at the time a disputed question; but each house appointed a committee to consider that question, after whose report it was voted by each house that all its members were qualified. These reports and the action upon the same appear in the appendix to the report made to the Senate by this committee, by Mr. Stewart, at the third session of the Fortieth Congress, and are hereto annexed, marked "Exhibit G." The general assembly thus organized not only elected Senators of the United States, but it also elected, as required by the State constitution, State officers, to wit, a secretary of state, a comptroller-general, and a State treasurer, all of whom have since been discharging the duties of their respective offices without question. At the same session judges of the various courts throughout the State were appointed by the governor, by and with the advice and consent of the senate, who have since been and are now presiding in the various courts of the State. The legislature thus organized passed laws authorizing the borrowing of money and affecting the general interests of the State, none of which have ever been held or supposed to be invalid for the reason that the legislature which enacted them was not properly organized. The reason for the passage of the act of Congress of December 22, 1869, requiring a reorganization of the general assembly is to be found in the wrongful expulsion by the general assembly in September,

[1] Second session Forty-first Congress, Globe, p. 1247.

[2] Globe, p. 5634.

[3] Senate Report No. 308, third session Forty-first Congress.

1868, of its colored members, in the seating of the minority candidates in their places, and in continuing in their seats members believed to be disqualified, and in the general disorder and violence which prevailed in the State. That act did not declare the general assembly as organized in July, 1868, to have been illegal, or its acts, other than those referred to in the act itself, invalid; but it provided for correcting the wrongful and revolutionary acts which had been done by it as organized in July, 1868. It is not believed that the act of December 22, 1869, would ever have been passed had the colored members been permitted to retain their seats and the peace of the State been preserved.

The body of the general assembly as organized in July, 1868, and as reorganized in January, 1870, is not essentially different. Of the 44 senators and 173 members declared elected by General Meade, only 5 senators and 19 representatives who participated in the organization of July, 1868, were excluded or failed to participate in the reorganization in January, 1870, and 21 minority candidates were improperly admitted to seats in the general assembly, as reorganized, in their places. The general assembly as organized in July, 1868, and at the time of the election of Hill and Miller, contained in each house a constitutional quorum of legal members. All the contestants maintained the position before the committee that the ineligibility or disqualification of individual members of either house, not sufficiently numerous to affect its constitutional quorum, was an immaterial issue. Your committee have not, therefore, deemed it necessary to discuss that question further than to state the facts in regard to it. Three of the claimants—Joshua Hill, W. P. Farrow, and R. H. Whiteley—have had their political disabilities removed by act of Congress of June 25 and July 20, 1868. H. V. M. Miller never labored under ally of the political disabilities imposed by the third section of the fourteenth amendment to the Constitution of the United States; but it is admitted that he acted as a surgeon in the rebel army under an appointment from a colonel of a rebel regiment, and having thus given aid to persons in hostility to the United States, can not take the oath required by the act of July 2, 1862.

The act of July 11, 1868, prescribes a qualified oath to be taken by persons elected or appointed to office from whom political disabilities have been removed. Your committee are of opinion that Joshua Hill was duly elected by a legislature having authority to elect Senators, and is entitled to take his seat on taking the oaths required by the Constitution and laws. Miller, however, is not relieved from taking the oath prescribed by the act of July 2, 1862, and in the opinion of your committee is not entitled to take his seat; and it follows from the conclusion of the committee as to the proceedings in the election of Hill and Miller that neither Farrow nor Whitely is entitled to a seat.

The committee recommend for adoption the following resolution:

Resolved, That Joshua Hill has been duly elected Senator of the United States by the legislature of the State of Georgia, and is entitled to take his seat on taking the oaths required by the Constitution and laws.

In the minority views, which favored the seating of Messrs. Farrow and Whiteley, Mr. Stewart argued that the act of June 25, 1868, provided that Georgia, with certain other States, should be admitted to representation in Congress, when they had complied with certain conditions. And he held that the conduct of the Georgia legislature had been violative of those conditions. He says in the minority views:

We have been able to find no case in the history of the Government where Senators have been admitted from a State not entitled to representation in Congress at the time of their election.

There are many cases in which this legislative declaration was not made until after the election of Senators. This has occurred in the admission of new States where the organization of the State and the election of Senators had occurred previous to the admission. But in those cases the act of admission was an approval of the organization that had preceded it, and amounted to a legislative declaration that the State at the time of the election of Senators was entitled to representation. In each of these cases the loyal status of the State was unquestioned, and the act of Congress admitting such State was construed to relate back to the election of Senators and to amount to a legislative declaration that the State at the time of the election was entitled to representation. This principle can not help the case of Hill and Miller, for at the time the declaration was made by the act of July 15, 1870, that the State of Georgia was entitled to representation, the status of things had been changed in Georgia by the reorganization of the legislature. This declaration related to the then existing condition of the State.

Congress has already in effect decided that the necessary legislative declaration that Georgia was entitled to representation was not made prior to the election of Hill and Miller. The act of December 22, 1869, "to promote the reconstruction of Georgia," can be justified upon no other theory than that reconstruction in that State was not then an accomplished fact. After a compliance with this act, and not before, we have the declaration in the act of July 15, 1870, that "it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States." If this act relates back to the date of the election of Hill and Miller, their exclusion from seats in this body from July, 1868, until now is wholly without justification, and the act of December 22, 1869, was an exercise of power over a State entitled to representation for which there is no precedent and which, if exercised in the case of Massachusetts or Ohio, would, to say the least, be open to grave constitutional doubts. It directs the governor to convene the persons originally elected to the legislature, and requires those persons, as a qualification for seats in that body, to take and subscribe to an oath hitherto unknown to the laws of the State of Georgia or of the United States; and it also required them to reorganize the legislature by electing officers, who shall also be required to take the same oath. It requires the legislature to ratify the fifteenth amendment before Senators and Representatives shall be admitted to seats in Congress, and prescribes various other matters, all pertaining to the reconstruction of a rebel State, and never applied to a loyal State whose practical relations to the Union were not disturbed. We venture to affirm that the Senate and House of Representatives in voting for that act did so upon the theory that they were reconstructing a rebel State, and not upon the theory that they were dealing with a State whose practical relations with the United States had never been disturbed, or which, having been disturbed, were then fully restored. It seems clear that the requirement alone that the legislature should ratify the fifteenth amendment before Senators and Representatives should be admitted from Georgia was in itself a declaration that Georgia was not, on the 22d of December, 1869, entitled to representation. But after the reorganization of the legislature under this act, the whole matter was again submitted to Congress, and Congress accepted the State as then organized. The act of July 15, 1870, was a legislative declaration that the State was then entitled to representation under the organization of the legislature as then existing, and related back to the commencement of the then existing state of things, namely, the reorganization of the legislature in January, 1870. This was a declaration that Georgia was entitled to representation at the time of the election of Farrow and Whiteley.

The language of the act of July, 1870, is "that the State of Georgia, having complied with the reconstruction acts, and the fourteenth and fifteenth articles of amendments to the Constitution of the United States having been ratified in good faith by a legal legislature of said State, it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States."

How can it be claimed that this language refers to the organization in 1868, in view of the facts in this case? Had the State of Georgia complied with the reconstruction acts at that date?

If this be so, Congress stultified itself in passing the act of the 22d of December, 1869, to promote the reconstruction of Georgia, eighteen months after she had fully complied with the reconstruction acts under which the other States were admitted.

It seems clear that this language embraced all the reconstruction laws with which Georgia was required to comply, including the act of December, 1869. It is evident that Congress intended to declare, and did declare, that after the compliance with the last-named act, and not before, Georgia was entitled to representation.

It is too late to question the propriety of these acts by either House, acting separately, upon the credentials of its Members, for it is too well established that Congress must determine when a State is entitled to representation. After that determination has been made, neither House, acting alone, can question its validity, but each House is confined, in passing upon the credentials of its Members, to matters of election and qualification.

We have shown that Hill and Miller were not elected from a State which at the time was entitled to representation by any act of Congress, from which it follows that they are not entitled to seats in the Senate.

We have also shown that Farrow and Whiteley were elected by a legislature of a State which Congress recognized as duly organized by declaring the State entitled to representation.

The election of these gentlemen seems to have been regular and a substantial compliance with law, and we therefore conclude that they are entitled to their seats.

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It is suggested that there is some doubt about the regularity of the election of Mr. Farrow, for the reason that there was no quorum present in the house of representatives at the time of his election. The records show that the house, when reorganized, and disloyal members excluded, consisted of 154 members, and Mr. Farrow alleges that 1 member, Robert Lumpkin, who had been sworn in, died before the Senatorial election, leaving the number 153. A quorum of this number would be 77. The number of persons present and voting was 82, of which Mr. Farrow received 80. But it is said that minority men were improperly admitted. We might answer this by saying they were admitted by the legislature, and that the Senate will not ordinarily review the action of that body in deciding upon the qualification of its own members.

But if the Senate would enter upon such an investigation under any circumstances (which on mature reflection we now think may be open to some doubt) it can not be called upon to do so in this case. The question of the proper organization of the legislature in January, 1870, was, at the last session, under investigation in both Houses, on the passage of the act of July 15, 1870. The report of the Judiciary Committee of the 2d of March last, printed as a part of the majority report, recommends that no further legislation be had to perfect the organization of the legislature of Georgia as it then existed, and Congress, acting on that report, decided it to be a legal legislature.

But admitting that the minority men were improperly received, the result would be the same.

The number of members declared elected in General Meade's order, who were allowed to qualify and retain their seats, leaving out of the calculation those who are known as "minority men," was 141.

Deducting Mr. Lumpkin, who is alleged to have died before the Senatorial election, and we have 140. Necessary to a quorum, 71. Number of persons present and voting on the election of Mr. Farrow, 71. Of this number Mr. Farrow received 69. Thus it appears in either case a quorum was present, and Mr. Farrow had a majority of that quorum.

All other matters in regard to the election of Messrs. Farrow and Whiteley we believe, are admitted to have been regular.

We therefore recommend for adoption a resolution declaring Henry P. Farrow and Richard H. Whiteley elected, and entitled to seats in the Senate on taking the oaths required by law.

The report was debated at length on January 30 and 31 and February 1.[1] On January 30[2] an amendment offered by Mr. Stewart declaring Messrs. Farrow and Whiteley entitled to take seats upon taking the oath, was disagreed to—yeas 19, nays 36. On February 1[3] an amendment striking out the name of Joshua Hill in the resolution of the majority and inserting the name of Henry P. Farrow was disagreed to—yeas 19, nays 36. Then the resolution seating Mr. Hill was agreed to without division, and he appeared and took the oath.

On February 24,[4] after a bill prescribing the form of oath to be taken by him had been passed by the House and signed by the President[5] Mr. Miller appeared and took the oath.

392. The Senate election case of Hart v. Gilbert, from Florida, in the Forty-first Congress.

Instance wherein the Senate admitted a person chosen before Congress had admitted a reconstructed State to representation.

Construction of the law specifying the time when a legislature shall proceed to the election of a Senator.

The Senate has declined to permit a contestant to be heard on the floor of the Senate in his own case.

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[1] Globe, pp. 816–830, 848–851, 871–874.

[2] Globe, p. 822.

[3] Globe, p. 871.

[4] Globe, p. 1632.

[5] 16 Stat. L., p. 703.

On April 1, 1870,[1] in the Senate, Mr. Thomas W. Osborn, of Florida, presented the credentials of Ossian B. Hart as Senator-elect from Florida for the term for which Mr. Abijah Gilbert was already occupying a seat. Accompanying the certificate was a memorial of Mr. Hart, setting forth the reasons on which he based his claim to Mr. Gilbert's seat. On motion of Mr. Osborn the papers were referred to the Judiciary Committee.

On April 13, 1870,[2] Mr. Lyman Trumbull, of Illinois, submitted the report of the committee, as follows:

In consequence of the rebellion the State of Florida was without representation in the Senate of the United States from 1861 till 1868. In pursuance of a constitution framed and adopted under what are known as the reconstruction acts, a legislature convened in Florida, Monday, June 8, 1868, the members of the assembly and half of the senate having been elected for two years and the other half of the senate for four years.

This legislature, on the 16th day of June, 1868, being the second Tuesday after its meeting and organization, proceeded, in accordance with the act of Congress of July 25, 1866, "regulating the times and manner of holding elections for Senators in Congress," to take action for the election of two United States Senators to fill the then existing vacancies for the terms expiring on the 3d of March, 1869, and the 3d of March, 1873. On Wednesday, the day following that on which each house had separately, but without result, voted for Senators to fill the two existing vacancies, the members of the two houses, convened in joint assembly, elected a Senator to fill the vacancy expiring March 3, 1869, and adjourned till the next day, when they again assembled and elected a Senator for the term expiring March 3, 1873, and adjourned without date.

The next day (Friday) the members of the two houses, each house having previously concurred in a resolution to that effect, assembled again in joint convention for the election of a Senator to succeed the one whose term would expire on the 3d of March, 1869, when Abijah Gilbert, the present sitting Member was elected.

The petitioner was chosen by the same legislature in January, 1870, to represent the State in the Senate for the term commencing March 4, 1869, and now claims the seat occupied by Mr. Gilbert.

The elections of 1868 all took place before the passage of the act of June 25, 1868, which declared Florida entitled to representation in Congress.

Two objections are taken to the election of the sitting Member:

1. That he was chosen by the legislature of a State not at the time recognized as entitled to representation in Congress.

2. That he was not elected in conformity with the act of July 25, 1866.

The first objection is answered by the fact that the subsequent recognition of the State as entitled to representation under the Constitution, in pursuance of which the legislature was elected and organized, related back to and made valid its acts from the time of its organization. Senators and Representatives from several of the reconstructed States have been chosen before the States were declared entitled to representation, and no one has ever questioned their right to seats when Congress subsequently recognized the government under which they were chosen as entitled to representation.

The only ground for the other objection arises from the fact that the legislature failed to take action on the "second Tuesday after its organization" in regard to the third Senator who was to be elected, but it took action on the subject of electing Senators and actually voted, though unsuccessfully, on that day for persons to fill the two existing vacancies.

The object of the act of Congress was to insure the election of Senators by the proper legislature, and to fix a time when proceedings for that purpose should be commenced and continued till the elections were effected.

The legislature by which the sitting Member was elected was the one chosen next preceding the term which would commence on the 4th of March, 1869, and was therefore the proper legislature to elect. "The second Tuesday after the meeting and organization of the legislature" was the time pre-

[1] Second session Forty-first Congress, Globe, pp. 2330, 2331.

[2] Senate Report No. 101, Globe, p. 2639.

scribed by the act of Congress for initiating the election of Senators, and that was the time when the legislature proceeded to that business. There being three Senators to elect, it took action on that day only in reference to two of them. Did its failure to take action on that day and the two subsequent days (which were occupied in electing the first two Senators) in reference to the third Senator render his election, in all other respects regular, invalid? The committee think not.

The language of the law is: "In case no person shall receive such majority on the first day, the joint assembly shall meet at 12 o'clock meridian of each succeeding day during the session of the legislature and take at least one vote till a Senator shall be elected." No formal adjournment from day to day by vote of the joint assembly was necessary, but it was the duty of the members of each house to meet in joint assembly at noon of each day and vote at least once till all the Senators whom the legislature had the right to elect were chosen. This is exactly what the legislature did.

In no view which the committee can take would the petitioner be entitled to a seat in the Senate, for if the election of the sitting Senator was irregular, that of the petitioner, by the same legislature at a subsequent session, was equally so.

The committee recommend for adoption the following resolution:

Resolved, That Abijah Gilbert was duly elected a Senator from the State of Florida for the term commencing March 4, 1869, and is entitled to hold his seat as such.

On April 15, 1870,[1] Mr. Trumbull presented the memorial of Mr. Hart, who prayed that he might be permitted to address the Senate on the subject of his claim, as he conceived that the report did not take what he considered the correct view of the case. The application was debated briefly, and it was stated that in the other House contestants were frequently heard, and that in a previous case from Florida the Senate itself had set such a precedent. But the general opinion of the Senate concurred in the view expressed by Mr. Roscoe Conkling, of New York, that the merits of the case could not fail to be tried searchingly without the introduction of new talent. Therefore Mr. Hart's petition was laid on the table.

On April 28,[2] the report came up, but was not debated except for the reading of a brief written argument, written by Mr. Hart, but presented by Mr. Timothy O. Howe, of Wisconsin, and read in his time.

The resolution confirming Mr. Gilbert's title to the seat was then agreed to without division.

393. The Senate election cases relating to Goldthwaite, Blodgett, and Norwood, from Alabama and Georgia, in the Forty-second Congress.

The Senate declined to give immediate prima facie effect to regular credentials impeached by a memorial alleging irregularities in constitution of the State legislature and suggesting personal disqualifications of the bearer.

On February 8, 1871,[3] in the Senate, Mr. George E. Spencer, of Alabama, presented the credentials of George Goldthwaite, elected a Senator by the legislature of Alabama, for the term of six years commencing March 4, 1871.

On March 4, 1871,[4] at the time of swearing in Senators-elect, Mr. Goldthwaite appeared to take the oath, when Mr. John Sherman, of Ohio, presented the following protest, signed by 45 members of the legislature of Alabama:

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[1] Globe, pp. 2705, 2706.

[2] Globe, pp. 3053, 3054.

[3] Third session Forty-first Congress, Globe, p. 975.

[4] First session Forty-second Congress, Globe, pp. 1–4.

MONTGOMERY, ALA., *January 26, 1871.*

To the Senate of the United States:

The subscribers, members of the senate and house of representatives of the State of Alabama, respectfully represent:

That they protest against the admission of Hon. George Goldthwaite to the Senate of the United States as a Senator from Alabama, on the grounds that he was not elected by a majority of the legal votes of the joint meeting of the legislature. He was declared elected by the following vote: For George Goldthwaite, 65 votes; for Willard Warner, 50; for William J. Haralson, 14 votes. It will be seen that 65 votes constitute a majority of the votes cast, and that number of legal votes are necessary to an election.

We represent that Hon. George Goldthwaite did not receive that number of legal votes, as B. M. Henry, claiming to be a representative from Russell County, in said State, who voted for Hon. George Goldthwaite, was not elected by the people of said county, did not have a certificate of his election, as is required by our laws, but was defeated at the polls by several hundred, and was not legally entitled to vote for a United States Senator in said joint meeting of the legislature, which, if said illegal votes had been rejected, would have been sufficient to prevent the announcement of the election of Hon. George Goldthwaite to a seat in your honorable body.

Saul Bradford, of Talladega County, who had been rejected by the people at the ballot box, was permitted to vote for said Hon. George Goldthwaite, when in our opinion his vote should have been rejected, as he had never been legally elected a member of the legislature.

In the counties of Greene, Sumter, Lee, and other counties, the representatives of which all voted for Hon. George Goldthwaite, we have every reason to believe that the elections of said representatives were procured by intimidating the voters, and in several instances fraud added thereto, and that the gentlemen claiming to be representatives of these counties were not legally elected by the people of said counties, are not their legal representatives, and were not entitled to vote for United States Senator at the joint meeting of the general assembly.

We are informed that some of the members of the legislature who voted for Hon. George Goldthwaite are laboring under political disabilities imposed by the fourteenth amendment of the Constitution of the United States, and it is an inquiry worthy the consideration of the Senate of the United States whether Hon. George Goldthwaite is not laboring under the same disabilities for his actions during the recent rebellion of the Southern States.

Believing, therefore, that Hon. George Goldthwaite is not legally elected Senator from Alabama, we respectfully pray that the Senate of the United States may so decide, and declare his seat vacant.

It appeared that Mr. Goldthwaite's credentials were in regular form, signed by the acknowledged governor, under the seal of the State, and that there was no question that the legislature which had elected was the rightful legislature.

In the debate Mr. Allen G. Thurman, of Ohio, urged that the memorial made no case against the Senator-elect. The Senate had never undertaken to canvass the question of the eligibility of the members of a legislature.

Mr. Sherman replied that the memorial related to much more than an inquiry whether one person or another was elected to the legislature. It showed that an intruder had cast a deciding vote, and also that in several counties of the State the right of the electors had been denied by force and fraud. In large portions of the State a quasi war had existed. There was a question also as to whether or not the claimant was qualified.

The matter was debated at considerable length on this day, and then the credentials and protest were temporarily tabled. During the debate the Rhode Island case of Asher Robbins was frequently referred to.

On the same day, March 4,[1] the Vice-President laid before the Senate the credentials of Foster Blodgett, Senator elect from Georgia. These credentials were in

[1] Globe, p. 4.

due form, but there had been filed a memorial of certain members of the late general assembly of the State of Georgia protesting against the admission of Mr. Blodgett to a seat for the following reasons:

That the election was not held in accordance with the law of Congress approved July 26, 1866, in that the legislature was not the body chosen "next preceding the expiration of the time for which" said Blodgett was elected to represent said State in Congress. The legislature which elected him was elected in April, 1868, and another legislature was chosen in December last, previous to the occurrence of the vacancy, upon whom, under the law, devolves the duty of electing the Senator.

That at the time said Blodgett was elected the constitution of said State required that the legislature to be elected in the fall of 1870 should assemble on the second Wednesday in January, 1871, prior to the occurrence of the vacancy; but that the day of meeting was wrongfully changed to November, 1871, with a view, as we believe, of creating a pretended necessity for an election of Senator by the old legislature. This change was not made until after the election of said Blodgett, thereby by a mere trick defeating an expression of the voice of the people in accordance with the laws of the United States.

That the election is, furthermore, illegal in this, that at the time said Blodgett was elected a quorum of the house of representatives of said general assembly was not present, as is shown by the journals of that body.

For which reasons we pray that said election be not recognized by your honorable body, and that the legislature elected next preceding the occurrence of said vacancy, which will assemble in November next, be allowed to elect a Senator to represent this State in your honorable body, as provided by the law of Congress, etc.

The credentials and memorial were temporarily laid on the table.

On March 13, 1871,[1] the papers in the cases of Messrs. Goldthwaite and Blodgett were referred to the Committee on Privileges and Elections.

394. The Senate election case relating to Goldthwaite and others, continued.

The Senate failed to follow its committee in giving prima facie effect to regular credentials impeached by allegations that the legislature had been elected in violation of the provisions of Federal law.

Senate decision as to the time when a legislature should fill a vacancy in the United States Senate.

An instance wherein a Senate committee reported in a single resolution their conclusions as to the election cases of claimants from different States.

A Senate ruling that the division of a question depends on grammatical structure rather than on the substance involved.

On March 20[2] Mr. William M. Stewart, of Nevada, submitted the following report:

That said credentials are in due form and *prima facie* entitle said Goldthwaite and Blodgett to their seats upon taking the oath prescribed by the Constitution and laws, neither of them being under any disability.

The grounds on which their right to seats are contested have not been fully considered by the committee for want of time, nor will there be sufficient time at this session to consider them. In the opinion of your committee it would be unjust to those States and gentlemen to keep the latter out of their seats until such investigation can be had.

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[1] Globe, p. 74.

[2] Senate Report No. 3.

The committee therefore report the following resolution:

Resolved, That George Goldthwaite and Foster Blodgett be permitted to take seats in this body upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which their rights to seats, respectively, are contested, and hereafter make reports to the Senate thereon.

WM. M. STEWART.
O. P. MORTON.
H. HAMLIN.
B. F. RICE.

We concur in the foregoing as to Goldthwaite, but not as to Blodgett.

JOSHUA HILL.
A. G. THURMAN.

On March 22[1] the resolution was taken up for consideration, and at once Mr. Joshua Hill, of Georgia, raised a question that the cases of the two claimants should be passed on separately, and proposed a division of the question.

The Vice-President[2] held, however, that the resolution was not divisible, as it did not conform to the rule which required that after the division each portion should present a substantive proposition.

Mr. Thurman dissented from this decision, holding that it was the subject and not the grammar which should control. But the Vice-President adhered to his decision, and in the subsequent proceedings the Senate separated the two propositions by amendment.

Mr. Joshua Hill, of Georgia, in order to separate the two propositions, moved to strike out the words "and Foster Blodgett."

The questions involved in the resolution and amendment were debated on March 25 and April 6 and 10.[3] It was objected that the case of Mr. Blodgett differed materially from the case of Mr. Goldthwaite. It does not appear that there was opposition to the swearing in of the latter. But there was opposition to the administration of the oath to Mr. Blodgett on the ground that there was a question as to the competency of the legislature. Mr. Thurman insisted that this question was essentially part of the prima facie case. The Senate sitting in a case like this was bound like every court to take notice of the laws and constitution of a State in regard to its legislature.

On behalf of the majority it was urged that the Senate was accustomed to seat persons bearing credentials regular in form except in cases where there was a question as to the right of a State to representation or as to the qualifications of the person bearing the credentials. The question as to the legislature of Georgia was a law question, and one that might well be examined and decided after the bearer of the credentials had been sworn in on his prima facie title.

On April 11[4] the subject was tabled to make way for other business, by a vote of 19 yeas to 17 nays.

At the next session of the Congress, on December 4, 1871,[5] Mr. Thurman presented the credentials of Thomas M. Norwood as Senator from Georgia for the six

[1] Globe, pp. 218, 219.

[2] Schuyler Colfax, of Indiana, Vice-President.

[3] Globe, pp. 272, 494, 540.

[4] Globe, p. 566.

[5] Second session Forty-second Congress, p. 1.

years commencing March 4, 1871. On December 11[1] the credentials were referred to the Committee on Privileges and Elections.

On December 182 Mr. Matt. H. Carpenter, of Wisconsin, submitted a report as follows:

The Committee on Privileges and Elections, to whom were referred the credentials of Foster Blodgett and Thomas M. Norwood, each claiming a seat as Senator from the State of Georgia for the term which commenced March 4, 1871, respectfully submit the following report:

The Senate being a branch of the Government of the United States, the right to elect a Senator is conferred and its exercise regulated by the Constitution of the United States, and no law or regulation of a State touching such election has any validity beyond the authority conferred upon the State by the Constitution of the United States.

The Constitution, Article 1, section 3, provides that Senators shall be chosen by the legislatures of the respective States. Section 4 of the same article provides:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."

The first clause of this section commits to the legislatures of the States primarily the whole subject of electing Senators and Representatives, and authorizes them to make such regulations upon the subject as they may deem 'proper. The phrase "the times, places, and manner of holding such elections for Senators and Representatives "embraces the whole subject of election of Senator except that the election must be made by the legislature of the State, as provided in the third section. The legislature may therefore provide that a Senator shall be elected by the legislature to be chosen next before the expiration of a term or next after its commencement. The second clause, quoted from the fourth section, confers upon Congress the same power and absolute control over the subject, to be exercised in the discretion of Congress, except that Congress can not fix a place for holding the election different from that fixed by the State legislature.

In the exercise of this undoubted constitutional power Congress passed an act regulating the election of Senators, approved July 25, 1866 (14 Stat. L., p. 243), which provides:

"The legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress in place of such Senator so going out of office."

Foster Blodgett claims to have been elected on the 15th day of February, A. D. 1870, by the legislature then existing and in session. He received the requisite number of votes, and his credentials are in due form. The question, therefore, is whether it was competent for that legislature to elect a Senator to serve during the term before mentioned. If this question can be answered in the affirmative, Mr. Blodgett is entitled to the seat; if not, his pretended election was an absolute nullity. The answer to this question depends upon the true construction of the act of Congress before quoted. It is claimed by Mr. Blodgett that chosen and elected mean different thin,"; that legislators are elected by the people, but that legislators are not the legislature, and that the legislature is not chosen until the members elected assemble as provided by law and organize as a legislature by determining what persons elected or claiming to be elected are entitled to seats. That is, the people elect the legislators, and the legislators after their election choose the legislature, and hence the legislature which was in fact organized next preceding the expiration of the term of office is the one authorized to elect a successor without regard to the time when the members of such legislature were elected by the people.

This refinement of reasoning does not meet the approbation of your committee. The question is, What was the intention of Congress in passing this act? The legislature designated by the act is the one "which shall be chosen next preceding the expiration of the time," etc. There is no such thing as choosing a legislature except by choosing its members. The Constitution declares that Senators shall be elected by the legislature of each State. Hence the act of Congress employs the same phrase. But your committee can not doubt that it was the intention of Congress to provide that the legislature whose members

[1] Globe, p. 55.

[2] Globe, p. 171; Senate Report No. 10.

should be elected next preceding the expiration of the Senatorial term should elect the successor. The distinction sought to be established between the words elected and chosen derives no support from popular or legal lexicography. Elected is defined chosen and chosen is defined elected, and the words are used as synonymous in the Constitution of the United States, the constitution of every State, in all our statutes, and in all popular literature. It is a universal rule of construction, applicable to constitutions and statutes, that words are to be understood in their popular, commonly received meaning, and to force upon this statute so unnatural a construction would defeat the intention of Congress, manifest in the act itself, and violate the fundamental principle of free government which doubtless inspired the passage of the act.

The legislature which was in session on the 15th day of February, 1870, when Mr. Blodgett claims to have been elected, was chosen in April, 1868. By the constitution and laws of Georgia then in force it was provided that another legislature should be elected on Tuesday after the first Monday in November, 1870, and that the legislature so to be elected should meet and organize on the second Wednesday in January, 1871. Thus it will be seen that at the time Mr. Blodgett claims to have been elected there was to be another legislature elected and organized prior to the expiration of the term for which Mr. Blodgett claims to have been elected to serve. Therefore, as the case then stood, the action of that legislature in the premises was without authority and directly in contravention of the act of Congress upon that subject. It is not claimed that Mr. Blodgett was elected at any other time or by any other legislature. The validity of his election must depend upon the state of case then existing. If the legislature had no authority to elect him at that time, their pretending to do so conferred upon him no right to claim this seat. If he has any rights they vested by that election, and were perfect as soon as the election was completed. His election was either valid or void; if valid, no subsequent action of the legislature could impair his rights; if void, no subsequent action of the legislature, short of another election, could entitle him to this seat.

Subsequently to Mr. Blodgett's pretended election the legislature provided by law, as it was authorized to do by the constitution of the State, that the legislature which was to be elected in November, 1870, and organized in January, 1871, as required by law at the time of Blodgett's pretended election, should not be elected until December, 1870, and should not convene and organize until November, 1871. But if your committee are right in their construction of the act of Congress, the legislature which convened in November, 1871, was the legislature chosen next preceding the expiration of the Senatorial term, and, consequently, that legislature was the one which was authorized to elect the successor; and this legislature did, in fact, elect Mr. Norwood. The fact that the State for months after the expiration of the former term, March 4, 1871, was without full representation in the Senate is not the fault of the act of Congress. The legislature authorized under the act of Congress to make this election would have been elected in November, 1870, and convened in January, 1871, and might have elected a Senator prior to the expiration of the former term but for the action of the State in postponing the election and organization of the legislature authorized to elect the successor. The State can not complain of its own act, nor ask the Senate to disregard the act of Congress, because the State has intentionally omitted to comply with the act of Congress, and avail itself of its provisions.

Therefore, Mr. Norwood having been duly elected at the first session of the legislature which was chosen prior to the expiration of the former term, your committee respectfully recommend the adoption of the following resolution:

Resolved, That Thomas M. Norwood is entitled to a seat in the Senate as a Senator from the State of Georgia for the term commencing March 4, 1871, and that he be admitted to the same.

On December 19[1] the Senate agreed to the resolution and Mr. Norwood appeared and took the oath.

On December 21[2] Mr. Thurman submitted the following resolution for consideration:

Resolved, That George Goldthwaite be permitted to take a seat in this body as a Senator from the State of Alabama, upon taking the oath, and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which his right to a seat is contested, and hereafter make report to the Senate thereon.

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[1] Globe, p. 211

[2] Second session Forty-second Congress, Globe, p. 261.

Mr. Thurman urged that, as Mr. Goldthwaite had credentials regular in form, he was entitled to the seat by prima facie title. He had examined all the precedents from the beginning of the Government, and had not found a single case where a Member-elect with such a title had been denied the seat. Had it not been for the complication with the case of Mr. Blodgett, Mr. Goldthwaite would have been seated long since.

Mr. Oliver P. Morton, of Indiana, said that so far as the alleged election of members of the legislature by fraud was concerned, and the alleged participation of an intruder were concerned, those were questions to be determined by the legislature. The question as to whether or not members of the legislature were under disabilities imposed by the Constitution of the United States was one which the Senate had a right to inquire into.

On January 9[1] Mr. Thurman called up the report of the committee on Mr. Goldthwaite's case, and proposed this substitute for the resolution therein presented:

amend the resolution by. striking out all after the word "resolved," and in lieu thereof inserting:

"That George Goldthwaite be permitted to take a seat in this body as a Senator from the State of Alabama upon taking the proper oath; and that the Committee on Privileges and Elections proceed hereafter to consider the grounds on which his right to a seat is contested, and hereafter make report to the Senate thereon."

It was determined in the affirmative; and on the question to agree to the resolution as amended, it was determined in the affirmative. So the resolution as amended was agreed to.

On January 15 Mr. Goldthwaite appeared and took the oath.

395. The Senate election case of Reynolds v. Hamilton, of Texas, in the Forty-second Congress.

Conflicting credentials being presented, and a question of law appearing, the Senate swore in neither contestant until after examination by a committee.

Decision by the Senate as to authority of a legislature to elect Senators before the date when the State became entitled to representation.

On July 13, 1870,[2] in the Senate, the credentials of Morgan C. Hamilton, as Senator from Texas for the term of six years, commencing on March 4, 1871, were presented.

On March 3, 1871,[3] the credentials of Joseph J. Reynolds, as Senator for the same State and the same term, were also presented.

On March 4, 1871,[4] at the time of swearing in Senators-elect, Mr. Oliver P. Morton, of Indiana, presented a joint resolution of the legislature of Texas relating to the cases affected by the credentials. Mr. Morton also stated that the credentials of Mr. Reynolds did not bear the signature of the governor, it having been omitted by inadvertence, evidently. The seal of the State had been placed thereon and they were certified in proper form by the secretary of state.

The papers were laid on the table for inquiry.

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[1] Globe, pp. 319, 376.

[2] Second session Forty-first Congress, Globe, p. 5527.

[3] Third session Forty-first Congress, Globe, p. 1979.

[4] First session Forty-second Congress, Globe, p. 4.

On March 13, 1871,[1] on motion of Mr. Henry B. Anthony of Rhode Island:

Ordered, That the credentials of Joseph J. Reynolds and the credentials of Morgan C. Hamilton, with the resolution of the legislature of Texas, declaring the election of said Hamilton on the 22d of February, 1870, as Senator from that State for six years from March 4, 1871, illegal, be referred to the Committee on Privileges and Elections.

On March 15,[2] the Vice-President laid before the Senate the credentials of J.J. Reynolds, elected a Senator in Congress by the legislature of the State of Texas for the term of six years, commencing on the 4th day of March, 1871.

The credentials were read.

The letter accompanying the credentials states that inadvertently the governor had not signed the credentials presented March 3.

On March 18[3] Mr. William M. Stewart, of Nevada, submitted the report of the Committee on Privileges and Elections, as follows:

That in pursuance of the several acts of Congress for the reconstruction of the State of Texas the legislature convened on the 8th and completed its organization on the 10th of February, 1870. On the 22d of February, 1870, second Tuesday after its organization, the legislature elected the Hon. Morgan C. Hamilton a Senator of the United States for the term commencing on the 4th of March, 1871.

The same legislature on the same day elected the Hon. J. W. Flanagan a Senator of the United States for the term ending March 3, 1875, and the Hon. Morgan C. Hamilton for the term ending March 3, 1871. These last two elections were to fill vacancies then existing, and both of these Senators were admitted to their seats.

By the constitution of Texas there was another session of the same legislature held in Texas after the election of Mr. Hamilton and before the expiration of his term. This session commenced on the 10th of January, 1871, and on the second Tuesday after its organization proceeded to the election of a Senator for the term commencing on the 4th of March, 1871, the same term for which Mr. Hamilton had been elected at the preceding session.

Gen. J.J. Reynolds is represented to have been elected, although the certificate referred to the committee is not signed by the governor.

The reasons assigned for the election of General Reynolds are that the legislature had no authority to elect Mr. Hamilton at the time of his election, first, because the State had not at that time been recognized as entitled to representation in Congress; and, secondly, because there was another session of the legislature after the election of Mr. Hamilton and before the commencement of the term for which he was elected.

The case of Hon. Abijah Gilbert, Senator from Florida, is precisely in point upon both of these questions.

The act of Congress of July 25, 1866, declares "that the legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress in the place of such Senator so going out of office, in the following manner."

The fact that the State was not admitted to representation until after the election of Mr. Hamilton is immaterial. The act admitting Texas to representation related back to the organization, and ratified the proceedings of the legislature.

The committee therefore recommend that Mr. Hamilton be permitted to take his seat on taking the oath prescribed by the Constitution and the laws.

Therefore the committee recommended this resolution:

"Resolved, That Morgan C. Hamilton was duly elected a Senator from the State of Texas for the term commencing March 4, 1871, and is entitled to take his seat as such upon taking the required oaths."

This resolution was agreed to without division.[4]

On March 20[5] Mr. Hamilton appeared and took the oath.

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[1] Globe, p. 74.

[2] Globe, p. 109.

[3] Senate Report No. 2.

[4] Globe, p. 168.

[5] Globe, p. 169.