

BYINGTON vs. VANDEVER.

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BRIEF

OF

WILLIAM VANDEVER,

IN

*The contested election of Byington vs. Vandever.*

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FEBRUARY 25, 1862.—Referred to the Committee of Elections, and ordered to be printed.

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*In the matter of the contest by Le Grand Byington of the right of William Vandever to a seat in the House of Representatives of the United States, pending before the Committee of Elections, the undersigned presents for the consideration of the committee the following, in answer to the memorial of the contestant:*

1. The contestant in support of his first point represents, that by the code of Iowa, enacted in 1851, it was provided that the general election within said State was that at which the members of the general assembly are regularly chosen; that, among other specified officers, representatives to Congress were to be chosen at such general election in 1852, and on alternate years thereafter.

In answer to this the undersigned would submit that the conclusion to be drawn from the contestant's position is, that members of Congress are to be elected in Iowa at the general election; that the general election is that at which members of the general assembly are chosen.

The act of March 23, 1858, as printed in the revision of 1860 of the laws of Iowa, pages 77 to 79, inclusive, provides, in sections 470 and 471, that representatives and senators shall be chosen at the general election, 1859, and every second and fourth year thereafter.

In 1857 Iowa adopted a new constitution, and in section 7, of act 12, said constitution provides that the first election thereunder for members of Congress, &c., shall be held on the second Tuesday of October, 1858, (revision of 1860, pages 1004-'5;) clearly showing that it was not the intention of the framers of the constitution to change the time for the election of members of Congress, but to continue the same on the even years, as under the "old constitution,"

while section 6, of act 12, of the "new constitution" expressly changes the election of members of the general assembly from the "even" to the "odd" years, (revision of 1860, page 1004.) Thus showing that the contestant's conclusion as to the general election being that at which members of the general assembly are chosen, and consequently the only one at which members of Congress are to be elected, is clearly erroneous; and it may be here stated that the act of March 23, 1858, referred to by contestant, merely follows the above provisions of the "new constitution" in relation to the election of members of the general assembly, and, being silent as to members of Congress, their election continues on the "even years," as indicated by the constitution and as fixed by the code of 1851.

It may be further said that section 1 of the act of March 23, 1858, being section 459 of the revision of 1860, expressly provides that a "general election" shall be held in each and every year, and that there is no such repealing clause in said act as cited by contestant; so that in code of 1851, fixing the time for the election of members of Congress, being in harmony with the provision of the new constitution, is yet in force.

2. As to the second point raised by the contestant, presenting the question of the right of the undersigned to hold his seat in Congress, and at the same time hold a military position or office, the following is submitted as an answer thereto:

The Constitution of the United States, in section 6, of article 1, provides that "no person holding any office under the United States shall be a member of either house during his continuance in office."

The undersigned holds no office under the United States; has never received a commission from the United States, as stated in said memorial of contestant; hence the above cited section of the Constitution of the United States has no application in this case.

WM. VANDEVER.