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CONGRESS.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, DECEMBER 19.

***Debate** on the report of the committee of Elections on the petition of sundry citizens of the county of Washington, in the State of Pennsylvania, complaining of an undue election and return of John Hoge, to serve in this House as one of the representatives for said state.*

The report being read as follows:

"That William Hoge, member of the House of Representatives for the eighth Congress, having by letter to the governor of the state of Pennsylvania, dated the 15th of October, resigned his seat in Congress: the governor in pursuance of the provisions made in the second section of the first article of the constitution of the United States, issued a writ of election to supply the vacancy which had thus taken place; That the said writ was issued on the 22d day of October, and the election directed to be held on the 2d day of November, eleven days after the date of the said writ; that the writ was brought by the mail to the Prothonotary's office in Washington, on the 30th of October, but not proclaimed by the sheriff 'till the 31st."

"It appears to the committee, that though by the second section of the first article of the constitution of the United States, it is made the duty of the executive authority of the respective states to issue writs of election to fill vacancies, yet by the fourth section of the aforesaid article, it is made the duty of the legislature of each state to prescribe the times, places and manner for holding such elections. It appears, however, that several elections to supply vacancies in Congress, have been heretofore held in Pennsylvania, yet on examining the laws of that state, it appears that no law exists prescribing the times, places and manner of holding elections to supply such vacancies as may happen in the representation in Congress, and consequently if the election of John Hoge is, on this account, set aside, no election can be held to supply the vacancy until the legislature of the state enact a law for that purpose."

"By the law for the general election of representatives to Congress for Pennsylvania, the sheriff is to give thirty days notice before the election, and to make the returns within thirty days after it.' This election is held near five months before the expiration of the existing Congress. By the law of said state for supplying vacancies in the state legislature, the Speakers of the respective Houses shall issue writs to supply vacancies that may happen, giving at least ten days notice. The governor, in the case now before the committee, has directed the election to be held on the same day, &c. on which the electors for President and Vice-President were to be chosen. There is no proof before the committee of any abuse in the manner of conducting the election in obedience to the writ issued by the governor."

"While the committee are of opinion, that the legislature of Pennsylvania ought to have appointed as near as might be the times, as well as the places and manner of holding elections to supply vacancies in Congress, and that in ordinary cases a longer period ought to intervene between the time of public notice and the day of holding the election, yet considering the special circumstances connected with the election of John Hoge, and particularly that the election took place on the day fixed by the state legislature for the appointment of electors for the state of Pennsylvania, the committee are of opinion that John Hoge is entitled to a seat in this House."

MR. LEIB was opposed to the report of the Committee of elections; he thought it a duty, therefore, to assign the reasons of his opposition—Were not the report to operate as a precedent for future decisions, he should have contented himself with a silent vote; but on this occasion, he could not forbear expressing his dissent to the doctrine advanced by the committee in support of the seat of the sitting Member.

The committee had made four points in their report.

That the constitution gives to the Executive of the state the power of issuing writs of election to supply vacancies. That if the election of Mr. Hoge be set aside no election can be held to supply the vacancy until the Legislature of Pennsylvania passes a law regulating special elections.

That there exists no law in Pennsylvania for the regulation of special elections for members of Congress, and that the notice by the Governor was sufficient, because it directed the election to be held on the same day on which the electors of a President and Vice President of the United States were to be chosen.

He would not deny, that the constitution of the United States gave to the executive the power of issuing writs of election to supply vacancies; but he denied the power of the executive to prescribe the *manner* and to fix the *time* of holding the election. In the fourth section of the first article of the constitution it is declared, that "the time, place, and manner of hold elections for Senators and Representatives shall be prescribed in each state by the legislature thereof," it is evident, therefore, that although the executive may have the power of notifying the vacancy and directing it to be supplied, yet that he cannot prescribe the time, the place, or the manner of carrying it into effect, this power being specifically delegated to the legislature. If he can prescribe the time, he certainly can prescribe the place and the manner; for the doctrine contended for implies an absolute discretion: and if the place and the manner be also placed in executive hands, he is vested with an absolute controul over all special elections.—Are the committee prepared to sanction such a doctrine? Will they admit, that elections, on which the safety and fate of the nation may sometimes depend, shall rest upon executive will?

Under the construction given to the constitution by the committee of elections, the Governor may have directed all the citizens of Washington County to hold the election at the town of Washington, or at any other town he pleased, and he may have conveyed the superintendance of it to other officers than those appointed by the people.—the power to issue writs of election to supply vacancies comprehended every incidental power, and the special election was wholly dependent upon executive discretion!

He agreed with the committee of elections in the second point, that if no law exists to regulate special elections and the election of Mr. Hoge is set aside, no election can be held to supply the vacancy, until the legislature of the state shall enact a law for that purpose; but he contended that a law did exist, and that the general rule governed the special case.—The law for the regulation of the general election for members of Congress was the rule on this subject, and this rule ought to have governed the special case in question. By this law thirty days notice is to be given; but in this instance only one day's notice was allowed. If thirty days notice were deemed not more than sufficient for a general election, surely a special election, not less important to the district, required an equal time for information to be diffused and consideration to be matured; and if this notice pointed out by the law had been given, he would dare affirm that the result would have been extremely different.

The committee of elections suppose, that because the election was notified for the day on which electors of a President and Vice President were to be chosen, therefore, it was a sufficient notice. The testimony upon the table shewed that only one day's notice had been given, that the writ had not been received until the 30th, and that the advertisement of the sheriff was not even prepared for publication until the nation of the 31st of October; the notice, therefore, could not have issued until the morning of the first of November, one day before the election was to be held.—The county of Washington comprehended not less than six election districts, and is extensive, and he would ask, how it was possible for the electors to be informed in one day? He averred that even in Philadelphia, where there were so many daily prints, and where information could travel with so much rapidity, that even there, one day's notice of an election would not enable the people to be informed, and could this be done in the county of Washington where the population was diffused over an extensive surface? It certainly could not.

The notice of an election for electors was no notice of an election for a member of Congress.—The electoral election excited little attention, because it was not disputed, and as there was no opposition the people remained at home; how then did this operate as a notice? Those only who attended the election could have been informed! and was the notice to *them* to be taken as a notice to *all*? Would a notification of an election for charter officers in any of our towns be deemed a notice of an election for a legislator of the United States, and if not, by what process could the notice in the present case be made to apply? Are the rights of the people to be held by such a tenure as is implied in this doctrine? He trusted not, and he hoped, therefore, that the committee of the whole would not affirm the report of the committee of elections.

MR. FINDLEY said, that being chairman of the committee of elections it was his duty to give information to the committee of the whole house, of the principles on which that committee made their report; that in order to do this, it was necessary to state in what manner the case was submitted to the committee of elections. This he said was the more necessary, as no election had ever heretofore been contested before Congress on the same principles. No opposing candidate claimed the seat; no unlawful vote was even suggested to have been given; no officer entrusted with conducting the election was charged with error or corruption. There were two points alone therefore on which the decision must rest. The one was the constitutional authority of the governor to issue a writ to supply the vacancy that had happened; the other was whether the governor had exercised that authority in an incorrupt or unjustifiable manner. He said that the committee of elections had not been unanimous in approving of the report, that two had voted against and four for it; that in this case, it not being necessary, he had not given his opinion, but that now when the report was brought before the committee of the whole House, and the case having originated in the state which he represented and with whose laws and practice respecting elections he ought to be acquainted, he claimed indulgence and attention in offering some further explanations on the subject. For this purpose he would examine the constitution as far as it related to the case. In the second section of the first article of the constitution it is said, "when vacancies happen in the representation of any state the executive authority thereof shall issue writs of election to fill such vacancies."

In the fourth section of the same article it is said, "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof, but Congress may at any time, by law, make or alter such regulations, except as to the places of chusing senators."

Mr. F. said that on these constitutional provisions there was a difference of opinion; that ever since the commencement of the federal government, he had understood the general opinion to be, that the fourth section related solely to the general elections of senators and representatives, but not to supplying vacancies that might happen; that the state of Pennsylvania, and several other states, had uniformly acted agreeably to this construction of the constitution; that the state of Pennsylvania had enacted five different congressional election laws, all differing in several principles from each other, three of which he had assisted in preparing, but on all these occasions, though influenced by different parties, there had been but one opinion on this subject and but one practice. In all cases the issuing writs to fill vacancies was left to the discretion of the executive, and in, he believed, four if not five cases which had happened previous to the present, the practice had been agreeable to this opinion. He said that he did not maintain that his opinion or the opinion of the state he represented, on which it had so uniformly acted, decided the true sense of the constitution; but he was still of opinion that it seemed to be the fairest construction, at least in cases where the legislature had not interfered. The executive shall issue writs, is the language of command; it renders the issuing the writ an indispensible duty. The fourth section is equally positive in enjoining on the legislature to appoint the times, places and manner of appointing senators as of representatives; yet in the third section the executive is authorised to appoint senators to supply vacancies in the recess of the legislature, and this is done probably to every Congress; but he believed the legislature of no one state had prescribed any rules for supplying vacancies in the senate, though the constitutional injunction in that case on the executive, is certainly not so positively expressed as with respect to issuing writs to supply vacancies which may happen in the representatives. Taking the fourth section of the first article of the constitution literally as it applies to the general elections, it is impossible for the legislature to mention the day on which a vacancy may happen, or consequently to appoint the day on which an election to supply a vacancy should be held, as it can do with the general election, therefore it appears evident that the constitution does not contemplate legislative interference in this case, though it does not restrain the legislature from establishing rules respecting it if they choose to do so.

Mr. F. said, that from a view of the constitutional provisions respecting elections and some other objects, it had been the opinion of many that they were designedly calculated to give a latitude to the states to vary their conduct with respect to forms and circumstances, provided the essentials were preserved; on this ground only can the great variety of practice under these rules, and all admitted by Congress, be accounted for. The 1st section of the 2nd article of the constitution directs, that "each state shall appoint in such manner as the legislature thereof may direct, a number of electors, &c." From these words Pennsylvania and several other states have always been of opinion, and practised accordingly, that it was the duty of the state legislatures to prescribe the manner or rules agreeably to which the citizens should appoint the electors; but the legislature of New York, and perhaps some other states, have always not only prescribed the rules or manner, but have themselves appointed the electors. This he said was more essential to the rights of the citizens than the case now before the committee, and yet, though universally known had been in every instance admitted by Congress. The rule for the representation in each state has been prescribed by the constitution, yet in many states the representatives are chosen at a general election, in others in single districts, in other states even in Pennsylvania some districts choose three members, some two, and some but one, but all of them may be chosen from any part of the state. Some other states have been divided indeed into single districts and obliged to vote for candidates residing within their respective districts. He said he would not detain the committee with further instances of the various and yet approved practices under the constitution, but hoped that even the members who might be of opinion that Pennsylvania had not given the constitution in the instance in question, the most correct construction, that yet they would duly consider other instances of variety of construction which had hitherto passed not only without objection or complaint, but with approbation.

Mr. F. said, that since this case was reversed to the election committee, he had heard the opinion of the constitutional provisions, agreeably to which Pennsylvania had acted, called in question, but never before; that the objections were new to him, but that on examining the laws of different states, he had discovered that the legislatures of two or three states, though they had not literally prescribed the times for holding elections to supply vacancies, yet they had prescribed such rules to to the executive in doing so as answered the same purpose, and thought they did right, but Pennsylvania and some other states had not done so in any instance, and that in no instance before the present had an election been questioned, because the legislature had not appointed these rules. The legislature of Pennsylvania not having prescribed any rules to the executive to regulate his duty in issuing writs to supply vacancies, did not release the governor from the constitutional responsibility of performing a duty so positively and unconditionally enjoined. Hence, Mr. F. concluded, that the election could not be set aside, merely on the account of the legislature not having enacted a law to prescribe the time of holding the election, the governor had acted in obedience to express word of the constitution, and violated no law of the state. Setting aside this election on this ground, would virtually annul all the elections to supply vacancies in Congress that had ever taken place in the state of Pennsylvania and in some other states. By the fourth section of the first article of the constitution, Congress is authorised by law to prescribe the time, place and manner of holding elections but this must be done by law, not by a vote of the House, after an election was over, therefore that power cannot apply to this case; Congress has passed no such law.

Mr. F. said, if the report of the committee was rejected, it must be on other ground than this—It could not be because the Executive exercised his constitutional discretion, but because he had exercised it in a corrupt, or in such an indiscreet or improper manner as to vitiate the election. This was a fair subject of enquiry, on which there might, and probably would, be a difference of opinion, and with respect to which he admitted the propriety of several of the objections made by his colleague, who had just sat down (Dr. Leib.) The governor, it appears, issued the writ immediately on the resignation of William Hoge coming to hand—He directed the election to be held on the same day as the general election for the choice of electors for President and Vice-President. The writ, it appears, lay one day in the prothonotary's office before it was proclaimed, the sheriff and prothonotary being from home. The notice after proclamation before the election was only a part of three days, and not sufficient time for the citizens to be informed of it at their homes, notwithstanding that it is the smallest district in the state, but those who did attend at their respective districts to vote for electors were actually informed by persons sent for the purpose. That this was the case was proposed to the committee, to be proved by the sitting member, but that fact appearing to be admitted by the petitioners, such proof was thought unnecessary. It appeared probable to the committee that the district at the seat of justice at which the governor's writ first arrived, had the advantage of earlier information than other districts; but this was incidental, and as the prothonotary to whose office the writ came and was opened, and the sheriff, &c. were opposed to the election of the sitting member, they had at least an equal advantage of the earliest notice, and those most zealous for the electoral ticket were not supposed to be his friends. Partial or fraudulent intention is not complained of by the petitioners; they are indeed few in number, and appear to have all had the earliest notice; there is no petition from any citizens complaining that they themselves were deprived of their vote for want of notice. The election for the choice of electors was not so numerous as was reasonably expected, but if the governor had given the ten days notice directed by law, for filling vacancies in the state legislature, and claimed by the petitioners, this would have happened in about a week after the other; respecting which the probability justified by all experience in Pennsylvania is, that it would have been still less numerous. This appears to have been the governor's opinion; it was also the opinion of several of his colleagues from the eastern parts of the state, who had seen and been informed by the governor that he had issued the writ, and who had first informed himself that it had been so issued. They, and all his other colleagues with whom he had conversed on the subject, he understood approved of the governor's conduct till they heard of the result of the election, and there was no proof before the committee that the shortness of the notice operated in favour of the sitting member more than the other candidate. As the votes given for both candidates agreed in voting for the same electors, notwithstanding that there was little time for concert.—On the whole, Mr. F. concluded, that as the issue of the election had occasioned exceptions to be taken to the shortness of the notice, he wished that longer notice had been given, though he had approved of issuing the writ; but as it was conducted under an authority vested by the constitution, on the same principle which had been always acted on in Pennsylvania and several other states, and never heretofore objected to by Congress, which was the only competent judge in the case, and as no corrupt intention or abuse was complained of, he thought it his duty to vote in favour of the report of the committee of elections. If the election was set aside till a law would be passed to prescribe the time, probably the district would not be represented this session, which he thought an argument of weight, but of little importance compared with deciding the principle; in doing which, if the report of the committee of elections was rejected, the decision might virtually vacate the seats of other members, and would condemn all the elections heretofore made in Pennsylvania and some other states, to supply vacancies in the House of Representatives.

MR. J. CLAY could not agree with the Committee of Elections in the opinion that there was no law in Pennsylvania regulating the place and manner of holding special elections for members of Congress to supply any vacancy which might occur in the representation from the state; by turning to the law respecting general elections he found that members of Congress were to be chosen by the inhabitants qualified to