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CONGRESS.

HOUSE OF REPRESENTATIVES.

DEBATE in the House of Representatives on the contested election of Cowles Mead, returned to serve as a representative of the state of Georgia.

DECEMBER 23, 24.

The following is the report of the Committee of Elections in this case :—

REPORT.

The Committee of Elections, to whom was referred the petition of Thomas Spalding, claiming a seat in this House, as a representative of the state of Georgia, in the place of Cowles Mead, who has been returned, and has taken a seat in the House, having had the same under consideration, and heard the petitioner and sitting member thereon,

REPORT....

THAT, by a standing law of the state of Georgia, the election of persons to represent that state in this House, was required to be holden on the first Monday of October, 1804, in the respective counties throughout the state ; that three or more county magistrates were required to preside at the election, in each of the counties, to return the names of the candidates, and the number and names of the voters, with an accurate state of the poll, and to transmit their said returns, by express, to the governor of the state, within 20 days after closing the poll at said election ; that the governor was required, within 5 days after the expiration of the said 20 days, to count up the votes from the several counties, or such of them as might have made returns for each person, and immediately thereafter to issue his proclamation, declaring the persons having the highest numbers of votes, to be elected to represent the said state in the House of Representatives of the United States, and to grant a certificate thereof, under the great seal of the state, to each of them ; that, by an official certificate from the secretary of said state, it appears that the votes from the counties of Tatnal, Liberty and Camden, were not returned to the governor within the said term of 20 days after the election, nor within the said further term of five days thereafter ; and that, of the votes given at the said election, and returned to the governor within the said term of 20 days,

Cowles Mead had	4438
And Thomas Spalding had	4269
Giving the said Mead a majority of	169

That the governor, in pursuance of the law aforesaid, counted up the votes so returned to him within 20 days, and thereupon issued his proclamation, declaring that the said Cowles Mead was elected, and granted him a certificate thereof.

By another certificate from the secretary of said state, it appears, that after the governor has issued his proclamation as aforesaid, that is, on the 27th day of November, 1804, the returns of the votes given at the said election, agreeably to the law aforesaid, in and by the counties of Tatnal, Liberty and Camden, were received by the governor, being transmitted by the presiding magistrates of said counties respectively ; that both of the said certificates from the secretary are in due form of law ; that the said returns of votes from the three last mentioned counties, are conformable to law in every respect, except that they were not transmitted to the governor within the limited time of 20 days after the election ; that, of the votes so returned from the said three counties, after the expiration of said 20 days,

Cowles Mead had	27
And Thomas Spalding had	235

which, added to their respective numbers of votes, returned to the governor within the term of 20 days, and counted by him as aforesaid,

Give to Cowles Mead in the whole	4465
And to Thomas Spalding in the whole	4504
Leaving the said Thomas Spalding a maj. of	39

The petitioner offered depositions to prove that the cause of the failure in the transmission of the returns from the three last counties to the governor, within the 20 days after the election, was a hurricane which rendered the roads impassable ; but, as the sitting member was not notified to be present at the taking of those depositions, the committee were of opinion that they were not admissible evidence.

The petitioner then proposed to procure other evidence of the same fact ; and the sitting member proposed to procure evidence to the contrary, that the roads were passable ; but the committee being of opinion that it was not material to the question before the House, whether the said failure was caused by the act of God, as alleged by the petitioner, or by the fault of the returning officers, or the defect of the law, in not providing a penalty upon officers for neglecting their official duty of transmitting the returns, did not receive any evidence on that point.

The sitting member stated to the committee that he could, as he was assured, by sending to Georgia, obtain proof, that the election in the county of Tatnal was irregularly held, so that the whole return of that county ought, for that cause, to be rejected ; but, finding by calculation, that if the votes of that county, of which 24 were for himself and 40 for the petitioner, were set aside, it would not affect the result of the election, he waved that objection, and rested his claim upon the principle that the votes of all the three last mentioned counties are void by the law of Georgia, not having been returned to the governor within the time prescribed by said law.

There is no suggestion of any fraud or intentional unfairness in the election ; and the committee add with pleasure, that the conduct of both the gentlemen, claiming the contested seat, appears to have been candid and honorable.

Upon the foregoing state of facts, as the constitution has made this House the judge of the elections and returns, as well as the qualifications of its members ; as the returns from the state authorities, therefore, are only prima facie evidence of an election, but not conclusive upon this House ; as there is, in the present case, satisfactory proof, that the votes of the three counties in question, although the returns thereof were not transmitted to the governor in season to be considered by him, were originally good, lawful, constitutional votes, having been given by qualified voters on the day, at the places, and in the manner prescribed by law ; and as neither the voters who gave them, nor the candidates, in whose favor they were given, have done or omitted any thing on their part, to forfeit their respective rights ; the committee are of opinion that those votes ought to be allowed, and therefore recommend the following resolution :

Resolved, That Cowles Mead, returned to this House, as a member thereof from the state of Georgia is not entitled to a seat ; and that Thomas Spalding is entitled to a seat in this House, as a representative of the state of Georgia.

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In the course of the discussion, the facts as stated in the report, were either considered as perfectly correct, or as partaking so little of error as not to invalidate the conclusions drawn from them. Some small diversity of opinion existed between the Committee of Elections and the sitting member, which was, however, reconciled on explanation.

The debate began in committee of the whole, and was afterwards prosecuted in the House. Messrs. J. Clay, Findley, Bidwell, G. W. Campbell and Elmer advocated : and Messrs. Mead, Early, Sloan, Ellis, N. Williams, Broome and Quincey opposed the report.

The opponents of the report represented it as embracing a great constitutional principle, relative to state sovereignty and the powers of the House. This question arose out of the judicial powers vested by the constitution in each branch of the legislature, as to judging of the election of its members. In the first art. 5th sec. of the constitution it is declared, that "each House shall be the judge of the elections, returns and qualifications of its own members." This section embraces three distinct objects, on which the judicial powers of each House might be exercised ; the qualification of persons returned as members, their election as members, and the returns of the person selected. With regard to the point of qualification, that could have no bearing on the present question. As to the election of persons returned to serve as members, the constitution has given to the several states the power to regulate the time, place and manner, subject to the interposition of the laws of Congress : As to the returns of members, there is no limitation to the power of Congress to judge of them. What power, then, is given by this section ? A judicial power alone. It is worthy of remark that an election and a return are entirely distinct acts ; where one ceases the other begins, and *vice versa*. Where then is to be found the power in Congress of prescribing the time, place and manner of making returns ? That such a power existed somewhere could not be denied, as without it an election would be nugatory. Will it be contended that this power is vested in the general government ; when it is not recognised by a single word of the constitution ? It is clear, then, that as the constitution is perfectly silent as to bestowing such a power in the general government, it does not belong to that government ; neither was it necessary to carry into effect any power specifically given to the general government. If, then, the power does not belong to congress, and it must reside somewhere, it follows from the theory of our government that it must belong to the states ; and that the only power in this House on the subject is to *judge* of the returns ; not to decide the time, place, and manner in which they shall be made, much less to dispense with the regulations which the states may make relative to them. But it may perhaps be asked, how the judicial power of this House can be exercised without uniting with it the power contended for on this occasion ? To this enquiry the answer is easy—The right to judge and the rule of decision are distinct things, and while the right to judge may be in one body, the prescription of the rule may be in another. The rule in such cases as these must be a state regulation, when it relates to points on which the states have exclusive legislation. If this case relate to a business in which Georgia has the exclusive right to legislate, there can be no other rule than her legislation. In order to illustrate this case, suppose good votes should be offered after the expiration of the time within which the election was directed to be held by state laws ; will it be contended that this House would have a right to direct them to be received ? Or that the constitutional rights of the House would be impaired by being obliged to respect the regulations of a state as to the time, place, and manner of holding elections ? Just so as to returns. The constitutional right of the House to judge of them is not impaired because a rule of judging is prescribed by another authority. Nothing is more common than this ; it is indeed, a leading feature in all the political institutions of the United States. The power to judge being vested in one body, and the prescription of the rule in another. All of our political writers have considered this as one of the most important features in our institutions. If we can dispense in this instance, with the time fixed for receiving returns, we may dispense with state regulations in other cases. If we can dispense with one rule, we can dispense with all ; and while the states are constitutionally fixing rules, we may be dispensing with them ; a conclusion at which common sense revolts.

With regard to the prevalence of the will expressed by a majority of the good votes given, it was observed, that that could be only ascertained by some legal provision, & that the only way of guarding it from abuse was to preserve the laws of the state inviolate ; and that altho' in some few instances a rigid adherence to them might be productive of some hardship, yet in its general effects it would be productive of much greater good ; and, it was added, that that species of reasoning was as novel as unsound, which went to protect the rights of the citizens of a state by prostrating the laws made to secure them.

To shew that the law of Georgia, limiting the time within which votes should be received, was obligatory upon the House, an elaborate argument was gone into, to prove, by a minute dissection of the constitution, that inasmuch as all powers not expressly given to the general government were reserved to the people or the states, and inasmuch as the only power specifically given related to the time, place and manner of holding elections, and not to the time, place and manner of making returns, no such power resided in Congress.

From all this reasoning it was contended, that though the House had a right to judge of the returns of its members, that right must be exercised in obedience to the rules fixed by the state of Georgia, which constitutionally possessed the power of prescribing them, and that they must be considered as conclusive, unless revoked or modified by Congress.

The friends of the report remarked that the power of the House on this subject was vested, by that part of the constitution which declares that "each House shall be the judge of the elections, *returns* and qualifications of its own members ;" and that this power was distinct from that which gave ultimately to the legislature, in case they saw fit to exercise it, the power of determining the time, place and manner of holding elections. The words, *judging of returns*, were comprehensive, unrestricted, and inclusive of every step incidental to making returns. The power could not be confined to the mere judging of the authenticity of the certificate of the returning officer, as that would be nugatory. It must likewise include the manner in which the votes were counted, in districts ; the manner in which they were transmitted ; the place appointed for receiving them ; and the ascertaining of their aggregate number. It had been truly said, that where the business of election ceases, that of the returns begins ; which, therefore, must be considered as embracing every thing after the votes were given. As soon as an election terminates, the candidate is elected, the only thing remaining is to ascertain the result ; and this is done by the returns made. What, then, is the right of this House to judge ? According to gentlemen, they have not a right to judge of the certificate of the officers of Georgia ; they have not a right to judge how the votes are transmitted ; but of all this the governor is to judge, under a law of Georgia. But such a law would be a mere nullity, as it would be in direct opposition to the words of the constitution, which give to this House the entire right of judging of the returns of its members. The fact was that the law of Georgia could only be considered as constituting the governor the organ of information to this House, which is the only tribunal, to which the returns can ultimately be made. So considering the subject, there was no reason for the remark, that the principle contained in the report went to set aside the law of Georgia. Should the power of the House, in this case, be denied, it would prevent us from investigating any case, however characterised by fraud, and would prostrate, at the feet of an executive officer, the power so guardedly bestowed on each House. It is enquired whether we will set aside the law of Georgia by the decision we are about to make ; but it does not follow that the adoption of the report will have this effect. The law of Georgia says that the governor shall count the votes received at a certain day ; but it does not say that the House shall not count those received afterwards. We, in fact, then, carry into effect the law of Georgia as far as it goes, and only, in case of a failure, supply the deficiency. Could there be a doubt of the principle assumed in the report, it would be removed by a denial of it giving the power to any petty officer of the state, by suppressing the votes, to deprive the member, legally elected, of his seat. Would this be a just principle ? Is it not our principle that a majority shall govern ? And is it not strange to say, that a state shall have the right of violating such a principle.

With regard to a return, it might imply two things ; the original certificate of the presiding officer in each election district ; and the general certificate of the whole election, the several parts of which were held in different places. It was necessary that these several certificates should be examined by some general authority. As a matter, therefore, of necessity, some authority must reside in the states, to count up the whole number of votes, and to certify the persons elected. This power was vested in different ways in the several states. Whoever exercised it could be only considered as the certifying officer, whose certificate was not a decision, but simply a return, subject to the control of this House, which is made by the constitution, the judge of it. The constitution says the House are to judge of the returns. Can those returns, therefore, be conclusive and binding upon the House ? If so, the power of judging is altogether nugatory. If we cannot go out of the returns, and judge of any thing not in them, we cannot be said to possess any power over them. But the words of the constitution are precise ; giving the unrestricted power to judge. The House then may receive other evidence to satisfy them, than that found on the face of the returns, and on such evidence may either allow that which is not in them, or disallow that which is. A case has been put, of votes received in contravention of a state law, after the time fixed for receiving them ; and it has been said that these votes ought not to be received. Why ? Because the *time* of holding elections being expressly vested in the state legislature, in the first instance, and Congress not having changed the prescribed time, the state regulation must prevail. But let the case be pursued further : suppose such votes are not only received, but included in returns made to the governor ;—he is not to judge of the legality of the votes given ; the state law only directs him to count up the votes returned ; whether they ought or ought not to be received he cannot judge ; of this the House is the judge. He cannot receive evidence out of the returns ; he therefore counts up the votes ; proclaims the person having the highest number ; and the returns are forwarded to this body. They are in due form ; but votes appear to be admitted which, by the law of Georgia, ought not to have been admitted. Is the House *concluded* by this return ? Are they not, on the contrary, empowered to go out of it, and receive evidence of the fact, that such improper votes were admitted ? No one will deny it. Further—suppose the presiding officer to have refused votes offered in time : suppose he had refused all the votes given for a candidate in several counties, the governor could not pay any attention to these votes ; for his certificate must be founded exclusively on the votes returned to him—He would be obliged, therefore, to certify as duly elected, the person having the highest number of such votes, although it might be proved that the suppressed votes, if counted, would have given the highest number to another candidate. Could not the House, in this case, go out of the returns of the governor, and allow the votes fairly given, to be counted ? Is the election to be affected by such omission or neglect ? Clearly not. In the present case, the votes in question, according to the law of Georgia, were lawfully given, and ought to have been returned. Had that law been observed, they would have been returned. In one respect only was there a neglect of it. Can that, then, be said to be a violation of the law of Georgia, which consists in giving effect to its provisions, where they have failed to be observed ? The great principle in judging of elections, ought to be, that the will of the people, fairly expressed, shall govern. And that construction of the constitution and laws of the U. S. ought to prevail, which consists in giving effect to good votes, rather than destroying them. This is the principle of the report.

The adoption of a hostile principle, would be to sacrifice the substance of election to its mere shadow.

The suggestion that the principle of the report is calculated to alarm the jealousy of the states is ideal. The judging of the election of members is a joint authority ; residing in the states in the first instance, and ultimately in this House. If the controlling power does not reside here, it resides no where ; there is a blank in the government. It cannot reside in Georgia, for the power is not concurrent, and if not here, the states must inevitably submit to every irregularity that may be practised by subordinate agents. It has been said that the law of Georgia is in force, but it can have no force at the expence of the constitutional power of the House. But was that law complied with ? If so, the present contest would not exist.

It was true, that the general principle is a sound one, which separates executive, legislative, and judicial power. This might be an argument for the institution of a special tribunal for the trial of contested elections, but it is an abundant answer to shew, that this has not been done ; but that, on the contrary, the constitution of the general government as well as the constitutions of the several states have made the legislative bodies judges of the elections of their members.

In the course of the discussion, various precedents were quoted from the Journals of the House, some of which were considered as applicable to one side, and some as applicable to the other side of the question at issue : but on a full examination of them, they shed so faint a light on the subject that we have considered it unnecessary to notice them.

The Yeas and Nays were then taken on the first member of the resolution submitted by the committee of Elections, viz. "That Cowles Mead, returned to this House as a member thereof for the state of Georgia, is not entitled to a seat."—Yeas 68—Nays 53—as follows.

YEAS.—Messrs. Anderson, Archer, Bard, Barker, Bassett, Bedinger, Betton, Bidwell, Bishop, Blake, jr. Blount, Brown, Bryan, Butler, G. W. Campbell, Chandler, Chittenden, Claiborne, J. Clay, Clopton, Conrad, Crowninshield, Dana, Dawson, Elliot, Elmer, Eppes, Findley, Fisk, Fowler, Garnett, Gray, Gregg, Halsey, Hamilton, Holland, Holmes, Jackson, Jones, Knight, Lewis, jr. Masters, N. R. Moore, Morrow, Mumford, Newton, jr. Olin, J. Randolph, T. M. Randolph, Rea, of Pen. Richards, Sammons, Sandford, Schuneman, Seaver, Smilie, O'B. Smith, S. Smith, Stanton, T. W. Thompson, A. Trigg, Van Rensselaer, Varnum, Walton, Whitehill, M. Williams, Wilson and Winston.

NAYS.—Messrs. Alston, jr. Broome, Boyle, Casey, M. Clay, Clinton, jun. Cook, Cutts, Darby, Davenport, jun. Earle, Early, Ellis, Ely, Goodwyn, Green, Helms, Hough, Kelly, Kenan, Leib, Livingston, Magruder, Marion, Meriwether, Morrow, Mosely, J. Nelson, R. Nelson, Pitken, jun. Pugh, Quincy, Rhea, Ten. Russell, Sailly, Sloan, J. C. Smith, Southard, Stanford, Sturges, Taggart, Tallmadge, Tenney, Thomas, Tracy, Van Cortlandt, Verplanck, Wadsworth, Whitehill, Wickes, D. R. Williams, N. Williams, and Wynns.

And then the yeas and nays were taken on the remaining members of the resolution :

"That Thomas Spalding is entitled to a seat in this House, as a representative of the state of Georgia."—Yeas 66. Nays 52.

MONDAY, DECEMBER 30.

Mr. John C. Smith, from the committee of claims, make a report on the petition of Wm. Brenk, jun in favor of the petitioner, which was referred to a committee of the whole on Tuesday.

Mr. Gregg observed that considerable difficulties had arisen in surveying the lands in Louisiana, owing to omissions in the law passed by the last Congress, and that the committee on public lands had received a letter from the Secretary of the Treasury representing these circumstance and stating the necessity of legislative interposition. Mr. Gregg having read this letter, asked in the name of the committee and obtained leave to present a bill extending the powers of the Surveyor General to the territory of Louisiana, and for other purposes.

The bill was read and referred to a committee of the whole.

Mr. Otis delivered a message from the Senate, stating that they had passed a bill to regulate the laying out and making a road from Cumberland, on the Potomac, to the river Ohio, in the state of Ohio ; and that they had likewise passed a bill, which originated in the House, entitled an act supplementary to the act making provision for the payment of claims under the French convention with amendments.