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Senator from N. C.

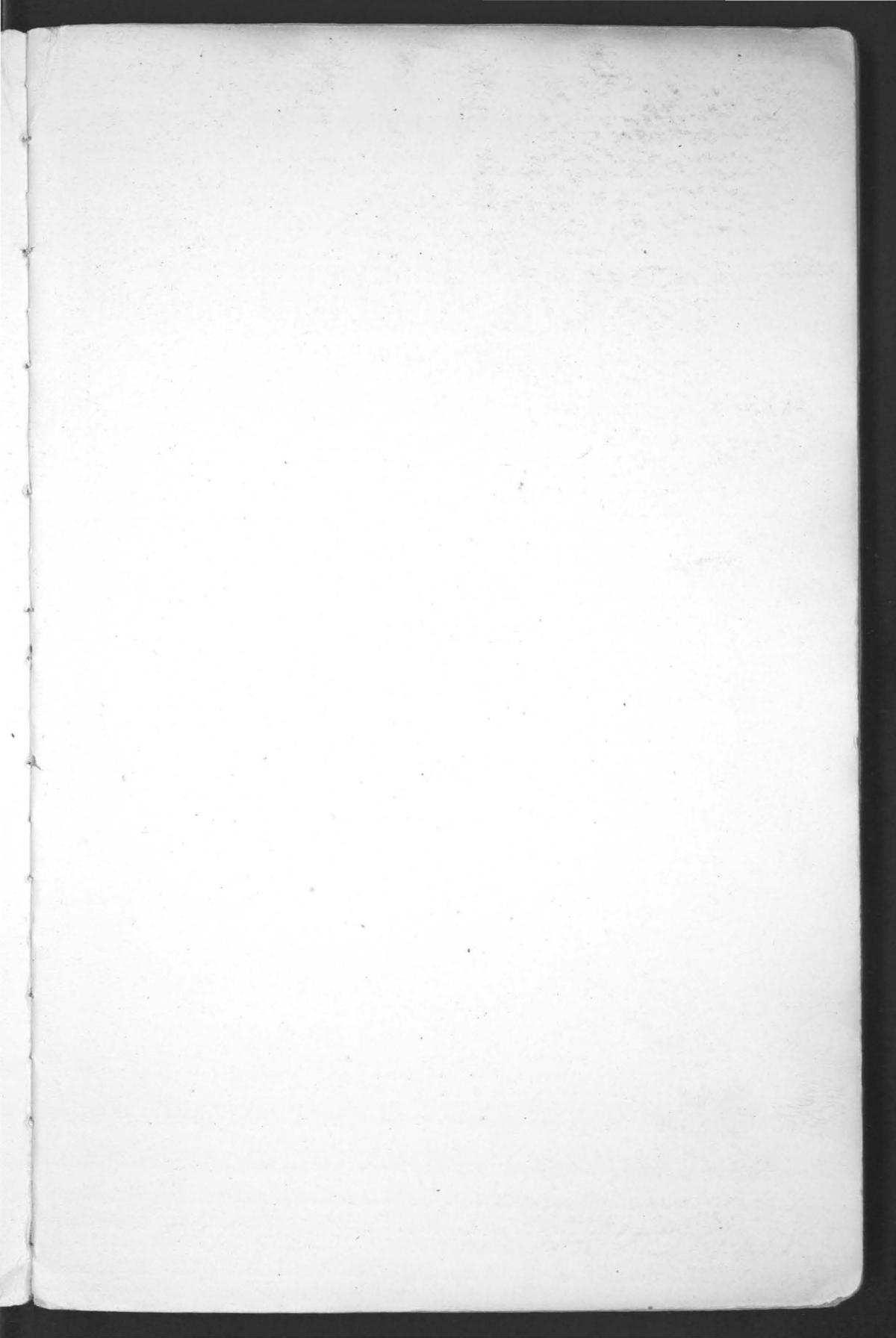
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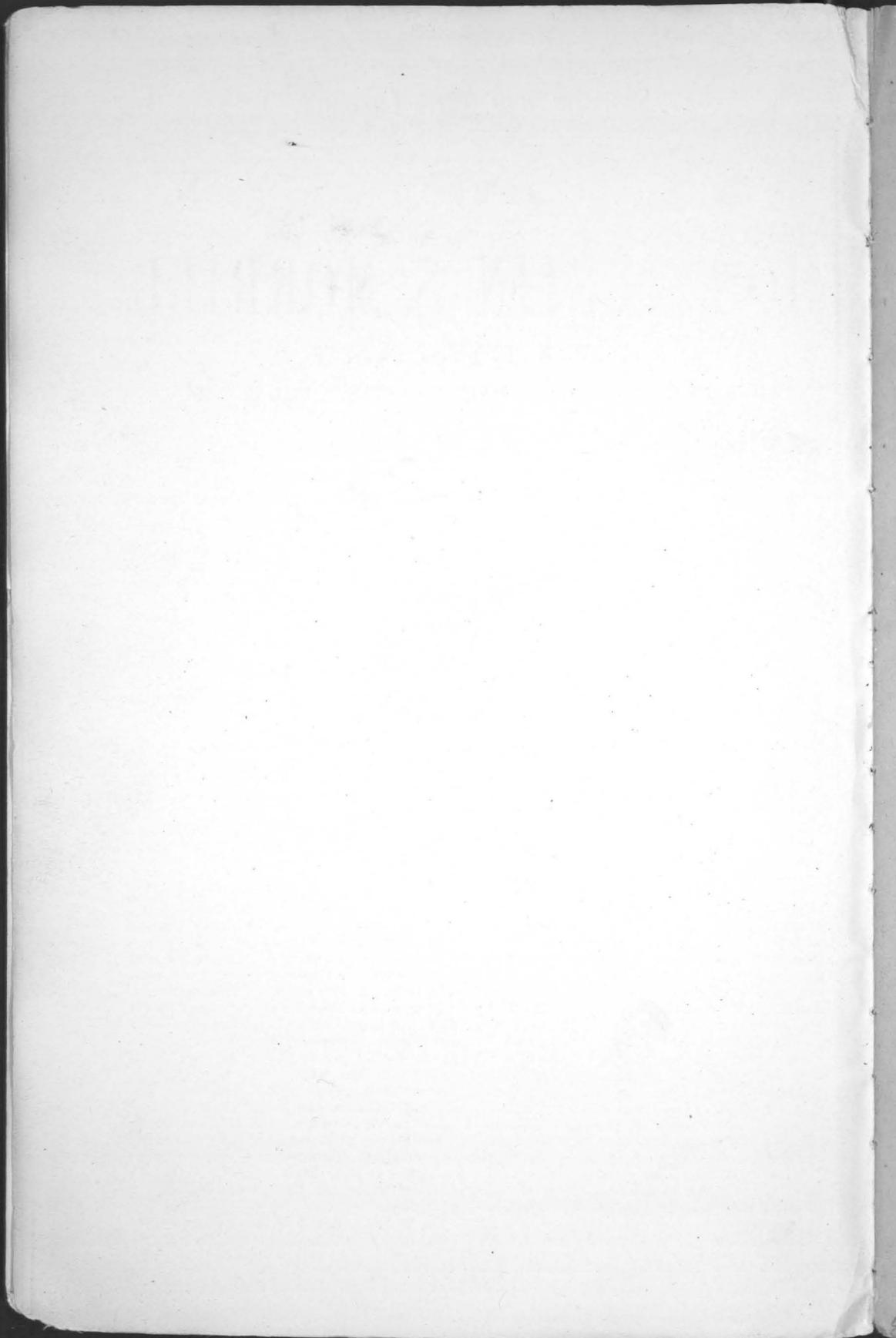




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Senator from North Carolina.



SPEECH

OF

HON. JUSTIN S. MORRILL,
OF VERMONT,

IN THE SENATE OF THE UNITED STATES, APRIL 12, 1872.

The Senate resumed the consideration of the following resolution reported by the Committee on Privileges and Elections:

Resolved, That Joseph C. Abbott, not having received a majority of the votes cast by the North Carolina Legislature on the second Tuesday in November, 1870, for the office of Senator of the United States, is not entitled to a seat in said United States Senate as such Senator.

Mr. MORRILL, of Vermont, said:

MR. PRESIDENT: I am not unaware of how much I am to suffer by way of contrast, as would almost any other man who undertakes to follow the impassioned and eloquent utterances of my friend from Wisconsin, [Mr. CARPENTER;] but however much I may suffer in manner by way of contrast, I know that I shall have full compensation by the contrast in the positions which I shall undertake to maintain. Senators, I shall not undertake to call your attention as judges to any ethereal considerations of law, but I shall ask you as honest men to take a view of facts.

Mr. President, let me avow that I should not intrude with any remarks upon a report of the Committee on Privileges and Elections, with which I am entirely satisfied, had I not been so much attracted, I will not say by the grotesqueness of the case, but I will say by its oddity, as to give it some attention. The formidable brief presented by the claimant of the seat here—formidable by its length, its ability, and its authorship—invited it, and its conclusions, now supported by the "views of the minority" of the committee, would seem to challenge the severest scrutiny of every Senator. I find that the question is not only a legal one, but more, it is a question of justice, of right and wrong, and of sound orthodox American policy. Being all this I shall be pardoned for giving some plain-spoken reasons for my concurrence with the report of the majority of the committee, and for rejecting the extraordinary, and, as it appears to me,

unhealthy and un-American doctrine espoused in the "views of the minority."

By the Constitution the Senate of the United States is made the sole judge of the election of its members. There is no appeal from its decisions. It is the high court which decides upon the law and the testimony. It is not a body which may elect whom it pleases where no election has been made, but the tribunal to decide justly between different claimants, and to decide as well whether any election has been had or not. It would be shameful if such a trust could not be safely reposed in the Senate of the United States, or if their decision should be governed by merely personal or partisan considerations, rather than by the law and the facts. It would give me joy to have a personal friend elected to the Senate, and I should have all proper pride in the election of a political friend, but it does not comport with any very elevated idea of duty, nor of honorable independence, to declare such friends elected when the facts show directly the contrary.

It is hardly necessary to say that I apply these words to the case of North Carolina now before the Senate. In that State an election of members of the Legislature took place in 1870, and it was understood by every one at the time that the Republican party had been badly defeated. To me this was a matter of deep regret, as I knew it involved, among other things, the loss of a Republican Senator. Our friends there struggled manfully and perhaps against fearful wrong-doers, but the result showed that they were defeated. The legal numbers were against them beyond all cavil. I do not think we can judicially recover, or that we ought to attempt it in the Senate of the United States, what was politically lost in the State of North Carolina; nor is the Republican party so poor that it cannot squarely face all losses which can be honestly charged to its account.

But by some antics of the law, as we are

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most ingeniously informed by the attorney of General Abbott, and assured by the minority report in this case, whenever the candidate elected by the majority is found to be ineligible, the minority candidate blossoms at once, and becomes the Senator "elect and precious." What the Legislature of North Carolina by their recorded vote did not do, that very thing by some transcendental supremacy of an unwritten law it is claimed they have done. I have great reverence for the law, and have been taught it was the perfection of human reason; but if this is law, then the new assignees of a detestable British invention deserve a patent for it, though the less we have of it the better for common sense. Under a republican form of government it never can be law, as it would sap its very foundations, which strongly rest on the fixed principle that a majority shall rule, and not a minority. The character of such an eccentric, if not necromantic interpretation of law, I shall be pardoned for saying, was fitly described nearly two hundred years ago in "Love a la Mode," as follows:

"The law is a sort of hocus-pocus science that smiles in yer face while it picks yer pocket; and the glorious uncertainty of it is of mair use to the professors than the justice of it."

Such an election law might smile here while picking the pocket of North Carolina, and certainly it would be of "mair use to the professors" than to anybody else.

Does any one deny that the Legislature of North Carolina was legally competent to elect a Senator? If competent when did it become incompetent? Certainly not, when, by having tried it failed to elect from the field of candidates to which it was and is properly circumscribed. If a vacancy existed upon the first trial it will again exist whenever the Senate shall declare the election void, or refuse admission to the elected candidate on the score of ineligibility. The power to elect remains continuously and forever with the Legislature, whenever a vacancy occurs, until fully and completely exercised. It cannot be snatched away or usurped by the Senate of the United States, which only judges of the law and the facts, but cannot elect or create Senators at will out of any raw material rejected by a Legislature, or make of itself any new laws in relation thereto. No matter how superior the rejected material, the Senate cannot correct the mistakes of a Legislature as to its choice of men. The facts prove—I wish they did not—Mr. Vance to have been elected, and that General Abbott had only a small majority in either House—too small to make him more than a candidate, and much too small to make him a Senator.

There is no law of the United States, or of North Carolina, which elevates minority candidates against the will of a majority. No American precedents can be found for such a fantastical result. Into what a vortex of ab-

surdity it plunges all republican ideas to say that, out of a convention of one hundred and fifty-three members, one hundred and sixteen of them voted wrongly, and shall, therefore, be at once disfranchised, or to say that the one hundred and sixteen shall be counted when wanted as good enough to make up a quorum, and yet that their votes shall be so many blanks, and not counted as soon as it is seen who they are for! For the purposes of a quorum, the argument is, the majority may be counted; but for the purpose of an election they shall not be counted. If this is not a "hocus-pocus science" that "smiles in yer face while it picks yer pocket," then I have failed to comprehend its character.

If the majority of the Legislature of North Carolina became disfranchised the moment they voted for a person who was ineligible, let us for once suppose that enough scattering votes had been cast at the first trial so that no one could have had a majority of votes and have been declared elected. In such a case General Abbott might have had the same number of votes as now, and why would he not have been entitled to the seat just as much as now? Only because Mr. Vance could not then have been declared elected. General Abbott is made by the minority report to win only when the Legislature not merely votes for somebody ineligible but declares that person elected. He wins, not upon his own admitted qualifications, for in spite of these he lacked votes, but upon the disqualifications of his opponent, who in spite of all these had votes enough and to spare. He is to win on the ground that one hundred and sixteen members of the Legislature were suddenly disfranchised, but not so much disfranchised as to leave the Legislature without a quorum and incapable of transacting business. He is to win on the ground that one hundred and sixteen members of the Legislature committed hari-kari and by their last will and testament, in a death-bed whisper, consented to the election of General Abbott. Do you think so, Mr. President? Sir, the common people everywhere will reject any such juggle.

The whole minority theory is built upon transparent fictions, round, bloated untruths, which are first made to assert that all votes, except the few given for General Abbott, were blank votes, when there were no blanks; then that a majority consented to the election of General Abbott by voting against him; and upon such a medley of inveracities as this to transfer to minorities the rights of majorities, a law is hoisted which the Senate for the first time, and I trust the last, is called upon to support. If this doctrine prevails a telegram should be sent to "the man in the moon" to lose no time in presenting his credentials to the Senate.

The first question we have to decide is who was elected by the North Carolina Legislature; and having decided according to the facts that

2. 3. 13. May 1849

Mr. Vance was elected, that decision disposes of the case of General Abbott. If one was elected, the other was not. It matters not whether Mr. Vance was an alien, minor, or an idiot, or whether he had been an unfor- given traitor, the fact is he was elected, and nobody else. The next question may or may not properly be presented. Mr. Vance having, as I am informed, resigned his seat, I do not perceive how his case can be properly pre- sented or considered at all. If Mr. Vance had insisted upon his claims, having been elected, so far as the Legislature could elect him, the question as to his qualifications, and whether he could take his seat in face of the fourteenth amendment or not, would be before the Senate for its decision. If the decision were against Mr. Vance, then of course there would be a vacancy, and nothing else. The decision would deprive Mr. Vance of a seat, but it would not deprive the Legislature of its privileges, nor triumphantly invest General Abbott with honors not won.

When the Legislature of North Carolina met, the vote for Senator stood, as is not dis- puted, as follows: in the senate, a quorum being present, Zebulon B. Vance received thirty-two of the votes given, and Joseph C. Abbott received eleven votes, and five votes were given for others, making forty-eight persons present who voted; and in the house, on the same day, Zebulon B. Vance had sixty-three of the votes given, Joseph C. Abbott thirty-two, and ten votes were cast for other persons, making one hundred and five persons present who voted.

It is charged by General Abbott, or it is charged in the brief of his attorney, and the charge is no doubt true, that Mr. Vance, under the fourteenth amendment, was inel- igible, and that the votes given for him were void and of no effect, and, therefore, that General Abbott was lawfully elected Senator. Less than one fourth of the senate of North Carolina and less than one third of the house voted for General Abbott, and yet it is soberly claimed that he was in fact lawfully elected. I confess to some surprise that any such claim should be seriously put forth in the American Senate, and it might not have been had not a theory been suddenly espoused, and a theory, according to the often-quoted saying of a learned Brahmin, will make men believe "a piece of sandal-wood to be a flame of fire."

Mr. Vance is properly excluded, and most probably would have been excluded even if he had not resigned his claims; but, suppose Congress had removed his disability, as it unquestionably might have done, and as the House of Representatives on its part has done several times, could he then have been ex- cluded? Assuredly not. Again, suppose Mr. Vance had been ineligible from being under thirty years of age, and before presenting him- self had reached the age prescribed. Would he then have been rejected? Bearing in mind

the cases of Randolph and Clay, assuredly he would have come in unquestioned. Clay was elected to the Senate when he was only twenty-nine years old. Randolph was of the proper age when elected to the House, but his appear- ance was so juvenile that every one took him for a boy, and when asked, he bade them "to go and ask his constituents." The case of Mr. Brown, of Kentucky, elected to the House of Representatives in the Thirty-Sixth Congress, before he was twenty-five years of age illus- trates the point, as he was not admitted at the first session of Congress, but was admitted at the second session unchallenged, having mean- time arrived at twenty-five years of age. His election was held to be valid after his disabili- ty had been cured by mere lapse of time.

But it is roundly claimed that precedents establish the rule claimed in behalf of Gen- eral Abbott, and what is assumed to be Brit- ish parliamentary authority has been cited in more than twenty pages of the brief already mentioned in its support. The most of these pages refer to the election of members of the House of Commons, and, of course, can have no relevancy to senatorial elections or to any- thing here, except possibly to elections of members of the House of Representatives. They refer to elections by the people where no quorum is required, and where the highest vote given for an eligible candidate elects. They do not refer to an election by a Legisla- ture, or to an election by an intermediate body which cannot transact any business with- out the concurrence of a majority of its mem- bers. The peers of Scotland elect at every session sixteen of their number as represent- ative peers in the British Parliament, and the peers of Ireland elect twenty-eight for life. If a case had been shown in any such elections of the admission of a peer who had received a minority of the votes cast, or of the admis- sion of a rival candidate against an ineligible person duly elected, its pertinency might be better insisted upon.

Our House of Representatives have from the outset disregarded the British precedents, trampled them under its feet, and though they are now profusely and impertinently, as it appears to me, thrust in the face of the Senate, they are strangely misapplied and wholly with- out force. But were they never so pertinent, British customs, whatever they may be, cannot be used as a guide, much less as an authority, in the present case. I am astonished that they should have captivated any philosophers or lawyers of this body, and I am grieved that they should have captivated so astute a lawyer as the Senator from Wisconsin. Such prece- dents are allowed to prevail in Great Britain in conformity to a system which gives to the people as little power as possible, but here the theory of government is to give to the people as much power as possible. There Parliament controls the people. Here the people, under a written Constitution, control Congress.

Great Britain has no written constitution that overrules Parliament in making laws. Parliament itself is supreme. Parliamentary and common law is not paramount here, and therefore does not rule political questions in the United States, and cannot be permitted to break down our own Constitution or laws, nor a long procession of well established American precedents.

Even in Great Britain, to bring about the boomerang result sought for by the minority report in this case, the fact of ineligibility must be clear and pointed out to the electors at the time of voting. How could this fact be known to the North Carolina Legislature, when they knew that Congress might at any moment before his entrance into the Senate, as the House had often shown its willingness to do, remove the disabilities from Mr. Vance, and as had been done in equally conspicuous and much more objectionable cases to enable other parties to hold office? How could they know that the Senate would not act as in the case of Senator PATTERSON, of Tennessee, and the iron-clad oath, and let Mr. Vance judge for himself whether he could take the oath without committing perjury or not?

If British precedents were of any value, and they are of no more than those of the ancient Druids, it appears to me the cases of most value would be those arising there prior to 1858, when Jews were excluded from taking seats in Parliament because they could not take the oath containing the words, "on the true faith of a Christian." The history of these cases of the London Jews shows that no minority candidates were ever permitted to take their seats, and yet the knowledge that the majority candidates were Jews, and therefore ineligible, was patent to every voter. Baron Lionel Nathan de Rothschild was elected as early as 1847, and several times thereafter, but was not permitted to take his seat until 1858, after eleven years of persistent exclusion. The case of Daniel O'Connell, in 1829, when he refused to take the oath of supremacy, and claimed the right to take the oath given in the Catholic relief act, was a case of a similar kind. Parliament at first issued a writ, as in any case of vacancy, but as O'Connell came back again and again, they at last permitted him to be sworn in. They did not admit another because he was ineligible.

British precedents must, however, be dismissed as no more applicable here than would be the ancient British system of rotten boroughs or that of peers voting by proxy. Foreign quibbles, even with learned and eloquent indorsers, cannot be voted American law.

It should be remembered, also, that the decisions of election cases in the British Parliament, from a long time prior to Sir Robert Walpole, and until the reign of Victoria, were a public scandal, because such cases were constantly decided with more respect to party affinities than to justice. Such is the verdict

of history. In the case of John Wilkes, Parliament once resolved that Mr. Luttrell ought to have been returned, and amended the return accordingly; but in a few years it became ashamed of its action in the Wilkes case and solemnly expunged some of its resolutions touching that notable case. Let us not amend returns of States by any action which hereafter we may wish to have expunged, and which would plague the unsophisticated voters of other States quite as much as those of North Carolina.

When we have stricken the British precedents out of the case, which lend to it but a crooked and one-legged support at best, the formidable brief of the attorney of General Abbott vanishes, and with it also disappears the shadow of the same brief reproduced by the minority of the Senate committee. The show of so-called American minority precedents occupies little space and deserves less. How it can be pretended that there are any American precedents of the slightest value to support the claim of General Abbott, is almost incomprehensible, when in fact those of both the Senate and the House furnish an unbroken series the other way. The House of Representatives, equally with the Senate, from first to last has been inflexible in its decisions against all claims of this kind. No minority candidate has ever obtained a seat on account of the ineligibility of the person really elected, and but few have ever had the presumption to moot the question, or to ask for anything more in such cases than that the seat should be declared vacant.

The Senate never has established, and it is not likely that it ever will establish a different rule from that of the House. If there are any such cases why did not the minority of the committee or the astute and most industrious author of General Abbott's brief, bring them forward? The musty records from the days of Queen Anne and all the Georges down to the present time, have been most diligently unearthed, while congressional cases have been with equal diligence seemingly covered up, perverted, or ignored. I think it would be healthful to bring forward American or congressional examples fit to be followed, and to some extent I propose to do this, rather than to follow such as would tear out the heart-strings of a representative form of government.

It is assumed that this is the first case which has occurred in our history, but that is a great blunder. It may be the first case under the fourteenth amendment—which adds only one more cause or description of ineligibility, while getting rid of that as to race or color—but not the first by any means where an ineligible person has been elected and where the question has been examined and adjudicated. Let us open the records of the House of Representatives.

In the case of Samuel McKee who claimed the seat of John D. Young of Kentucky, (in 1868) on the ground that the latter was ineli-

gible by reason of disloyalty, and therefore all votes cast for him were illegal and void, the majority of the committee decided, although the disloyalty was sufficiently proved, that neither was elected, but that a vacancy existed, and the minority said that McKee had not even the shadow of a claim to a seat.

In the case (in 1869) of J. H. Christy and John A. Nimby, disloyalty was decided to be a bar to a seat; but it was also decided that the minority candidate, though loyal, could not take the seat.

In the case of Samuel E. Smith vs. John Young Brown, in 1868, the former rested his claim to the seat solely upon what he alleged was a legal result, following from the conclusion to which the House committee arrived, that Mr. Brown, who did receive a majority of the votes, is not entitled to take the oath of office or to hold the seat. British precedents were pointed out, but the committee would not accept them as a binding or wise rule for the government of the House.

There is a still later case in the House of Representatives, and later than the fourteenth amendment. I mean the Louisiana case of Simon Jones vs. James Mann and others, in 1869. Mr. Jones claimed that Mann was ineligible because he was not a resident of Louisiana but of Maine, and that having received the next highest number of votes he (Jones) ought to have the seat, and that, in the absence of any American precedent, which was admitted, there should be one established in order to enforce the faithful execution of the fourteenth amendment. But the committee decided if the evidence was held to be satisfactory it would not aid Mr. Jones, nor entitle him to the seat, but would only show there was a vacancy. Here, then, where the British precedents would apply, if anywhere, the question was squarely presented and squarely answered. Can we ask for more?

These cases were reported upon while Hon. Mr. DAWES was chairman of the House Committee of Elections, and it is not too much to say that there is not in either House a gentleman more learned in the law of elections, or better qualified from long and laborious experience to reach just conclusions in the application of the law. But the Senate has established its own rule, has done it early and late, and will not be likely now to set it at defiance. The first contested election to the Senate, like the present, was a case of ineligibility, and I refer to that of Ramsey vs. Smith, in 1789. But no one then even thought of claiming, on account of the ineligibility of Smith who had received a majority of the votes, the election of Ramsey, the minority candidate.

In 1793 Albert Gallatin was elected Senator from Pennsylvania before he had been nine years a citizen of the United States, and his seat was declared vacant.

In 1824 the seat of John Bailey, of Massachusetts, was declared vacant from non-resi-

dence, and a new election had without any claim on the part of any minority candidate.

In 1849 the seat of James Shields, of Illinois, an alien by birth, was declared vacant because of ineligibility, and the right of a minority candidate was not even raised.

When the Legislature adjourns without filling a vacancy, the Senate has decided, as in 1854 in the case of Senator Phelps, of Vermont, that even the Governor of a State cannot fill the vacancy, but that it must wait to be filled by the Legislature.

These cases—and I know of none of an opposite character, not one—unmistakably establish a rule by which we must be governed, and which unmistakably excludes General Abbott. A foot out of joint on the part of the person elected by a majority does not put the staff into the hands of the person having the next highest number of votes. Ineligibility has no other effect than to sink the person to whom it applies, and is not like the bucket in the well, which cannot go down without raising another.

Mr. Vance is no longer here. He once knew the flag of the Union and loved it, but at last he denied it, and, like Peter, "cursed and swore." It is enough that he has abandoned his own suit.

General Abbott is here and I hope may have better luck at home another time. His record is patriotic; but in this place "if a man thinks himself to be something when he is nothing, he deceiveth himself." His judgment has been misled by the "much learning" of his attorney and the hot zeal of personal friends. He once submitted his case to the Legislature, and if the judgment was against him he must abide by that judgment, or the institution of elections becomes a farce.

I am opposed to a declaration in favor of the minority candidate, because it is not only ethically wrong but grossly impolitic. We cannot do it without reversing all of our own previous decisions now imbedded among the cardinal rules of our Government. We cannot do it without setting up senatorial absolutism against freedom of elections. Amnesty, whether universal or general, may well divide our opinions, but there ought to be no division as to the impolicy of punishing the whole State of North Carolina for sins predicated on the acts of Mr. Vance. In enforcing constitutional disabilities against offending individuals, let us stop short of adding a gratuitous insult to States. A State must go without representation so long as it perversely sends a person here for its Senator who cannot make oath that he has not been a traitor, or who may otherwise be ineligible; but let us restrain that impetuous revenge which would add the further and illegal penalty of confiscating the right of the State to representation when even "clothed and in its right mind," it shall choose to exercise that right in the manner prescribed for all other States. To force a

Senator upon a State against its own will could be infinitely worse than a denial of its equal suffrage in the Senate.

It is rather awkwardly claimed that a precedent in favor of minority candidates may be found in presidential elections on the ground that it has sometimes happened that more voters have voted for electors who sustained the minority candidate than have voted for the electors of the successful candidate, in consequence of their distribution among the States, some of which were carried by large majorities and others by small. The people, however, do not vote directly for President, but for such electors as they, with or without pledges, are willing to intrust with the power to choose a President. A majority of the electors is essential, nothing less will do. Should they, by some oversight or in plain disregard of constitutional requirements, cast a majority of their ballots for an alien or a person under the required age, would it be pretended that the person having the next largest number of votes, though only a feeble minority, would thereupon under any American law or usage become the actual President of the United States? The bare statement of the case shows its untenableness. Of course there would be a vacancy to be filled as in any other case of vacancy.

The last clause of article five of the Constitution, which provides "that no State without its consent shall be deprived of its equal suffrage in the Senate," has no relation whatever to the present question, and most certainly cannot be construed in any manner to force upon a State a Senator without its consent. When a State neglects or refuses to send Senators here in accordance with its rights and duties under the plain provisions of the Constitution, it does consent to the contingency of being deprived of its equal suffrage in the Senate. It foregoes its rights. If a State elects a person as Senator under thirty years of age, or an alien, or as in this case, a person ineligible under the fourteenth amendment, it is simply a nullity, for which the State is alone responsible, and the State for the time being consents to forego its proper representation. The office is not filled, and there is no power lodged in any other quarter to permanently fill the office except in the Legislature.

The Senate of the United States cannot select any of the rejected parties thrown out by the Legislature to breathe official life into them, and then hold their own act to be all the work of the Legislature as to do so would be to recognize and admit a Senator under the dim color of a title solely derived from having once been a candidate, and a candidate overwhelmingly defeated. There could be no citizen of a State eligible to the office who would not, under these circumstances, have a more legitimate claim to the seat than such a defeated minority candidate. He, aside from all others, has been cast out. It may be unfortunate for

him and for us, but the Senate of the United States, however generously inclined, must on their oaths give to General Abbott no more than he can claim as a clear and indisputable right, and all his rights here have been extinguished by his own people. That decision binds both him and the Senate. According to the Constitution "the Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof." The State, therefore, sends Senators chosen by the Legislature thereof, and it would be something worse than a subterfuge to declare that a person had been elected exactly contrary to what the records of the Legislature show. It would be an imposture.

Nor can the Senate punish the Legislature of North Carolina for omitting to elect General Abbott or for electing Mr. Vance. The only punishment which the case admits of is that which has been self-imposed, namely, the temporary loss of equal suffrage in the Senate, for the sufficient reason that their elected favorite cannot make oath that he has not been a traitor and perjurer, and cannot, therefore, be admitted to a seat. The Constitution does not empower the Senate to inflict punishment upon the Legislature of North Carolina for what it may hold to have been an error of judgment, or even for an unpatriotic performance of duty, and for the Senate to accept here for six years to come the person the State has emphatically rejected—depriving the Legislature for that length of time of all jurisdiction of the question, imposing upon the State a person politically obnoxious—would be perhaps a cruel (certainly an unusual) punishment, which the Constitution expressly forbids, and would besides be a rasping and gratuitous folly of the same magnitude as that committed by the Legislature itself; that is to say, it would be the admission of a person to this body by our vote and favor who bears no other commission. We may exact the pound of flesh of Mr. Vance, but in taking that we must take no drop of blood from the Legislature. We may exile him, but we cannot enthrone any pretender.

One more point in this case I will mention and then I shall have done. Congress having the full power as to the times and manner of holding elections for Senators, has regulated the same by the act of July 25, 1866. I call attention to this act, though it has been already cited by the Senator from Illinois [Mr. LOGAN] in his opening speech, because it must be admitted that it supercedes any law of North Carolina, whether contrary to it or in harmony with it. Let me quote from this act:

"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: each house shall openly, by a *viva voce* vote of each member present, name one person for Senator in

Congress from said State, and the name of the person so voted for, who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal.

At twelve o'clock meridian of the day following that on which proceedings are required to take place, as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each House, such person shall be declared duly elected Senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes cast in each house, or if either house shall have failed to take proceedings, as required by this act, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and a person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the Legislature, and take at least one vote until a Senator shall be elected."

Here, it will be seen, the idea of "a majority" reigns paramount over all else, seven times repeated in one brief section; and yet this national statute, so packed in definitive meaning, requiring "a majority of all the votes in each House," "a majority of all the votes of said joint assembly, a majority of all the members elected to both houses being present and voting," has been disjointed, and its plain and obvious intent tortured into the support of a person as Senator who, at no stage of the electoral proceedings, was anything but a hopeless candidate, or who received more than an extremely meager minority of the votes cast. The constitution of North Carolina and the law of Congress both require the presence of a majority of all the members, not for dumb show, not as idle lookers-on, but for the transaction of business. They must be "present and voting." That presence can only be legally known by their voting, and when they do vote we cannot separate a part of the voters and say to them, in the language of Rip Van Winkle, "This time your vote

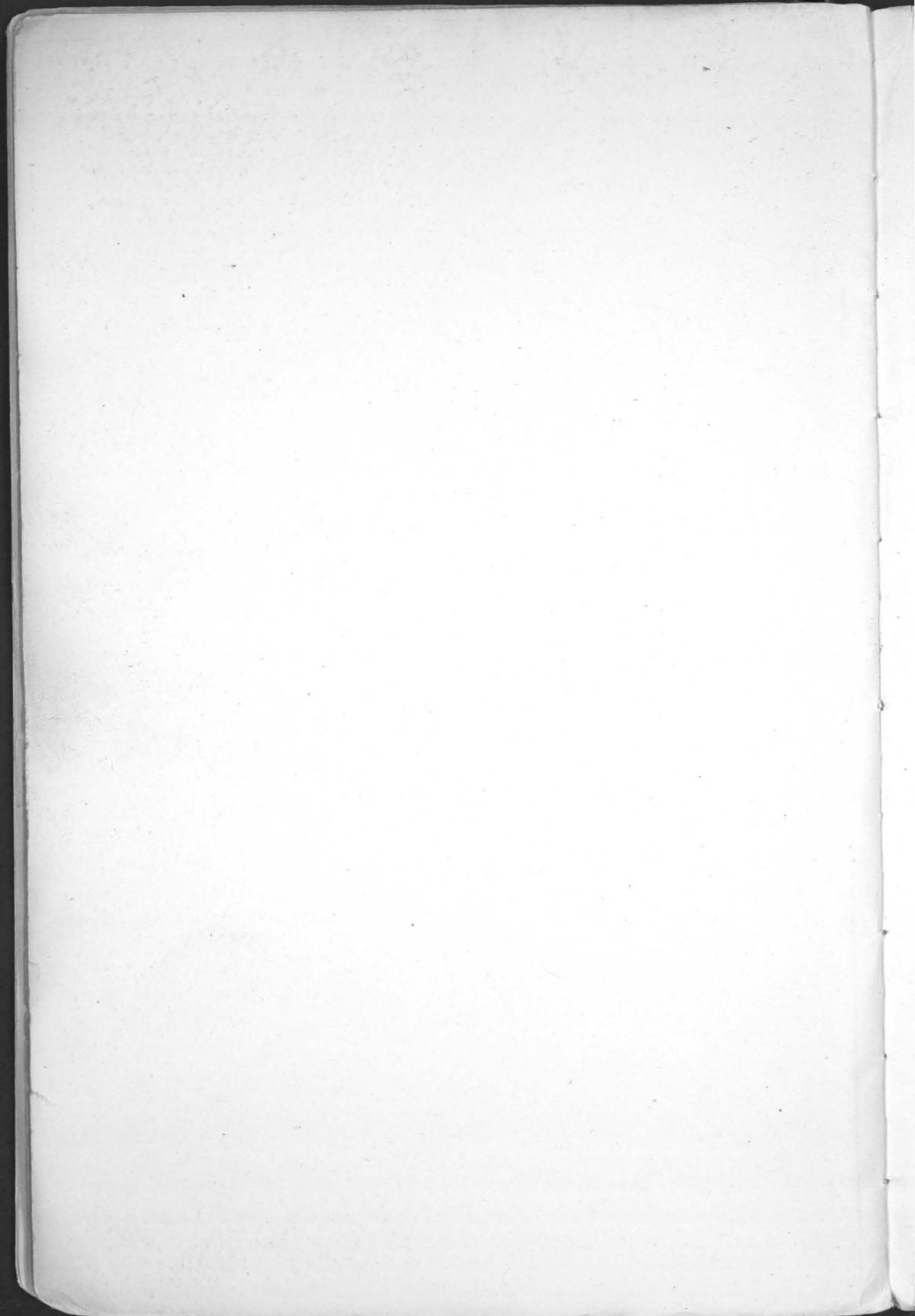
shall not count." If a majority did not vote for General Abbott, there is no process of alchemy, no deviltry of logic, no discreditable uncertainty of American law which can change the fact. The law I have quoted, if every page of congressional history was not in harmony with the same theory, would contradict and confound the claims of General Abbott. The Senate will judge whether Mr. Vance is eligible or not, and also whether General Abbott has been elected or not, but it cannot be expected to change and reverse the vote of a State Legislature or to invade its privileges; nor can General Abbott, with all his loyalty, and Mr. Vance with all his votes, be rolled into one to make a Senator.

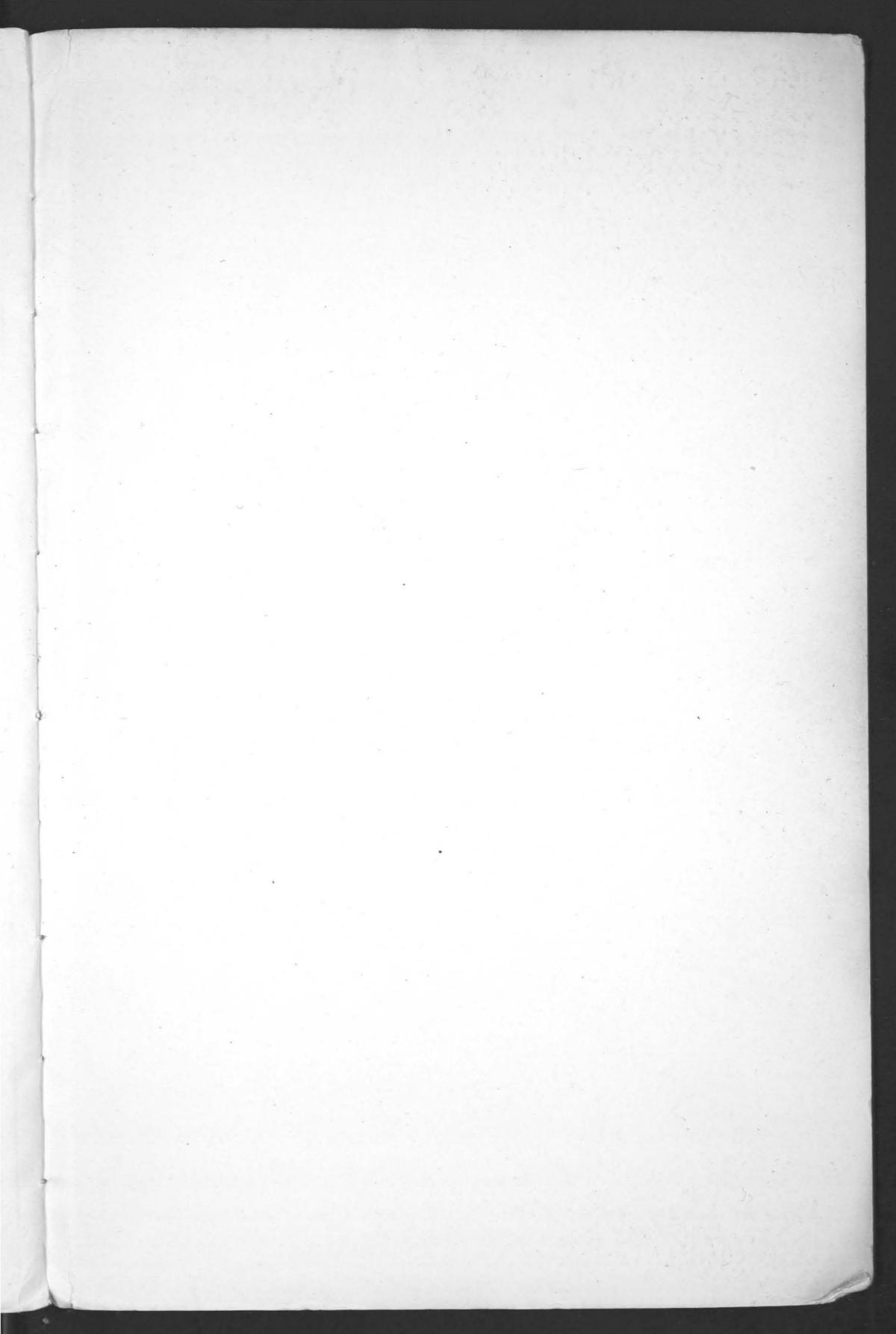
The conclusions reached by what I have said may be summed up as follows:

1. That the claim of a minority candidate to an election on account of any infirmity or disability of the person otherwise really elected offends every idea of political propriety.
2. That, without a single exception, every precedent of the Senate and House of Representatives stands out against the doctrine of winning minorities.
3. That even British precedents do not sustain the case of Abbott—as the ineligibility of Vance was removable at the pleasure of Congress, and the election was by a body where a majority of all its members was necessary to elect, and not a popular election by the people, of whom no such quorum can be required—and if British precedents did sustain the case, they would be at war with the whole theory and past history of our form of government and must be rejected, whether in whole or in part.
4. There being no such congressional precedent as the admission of General Abbott would make, the establishment of one now would be not only a gross wrong but highly impolitic. Finally, it is our duty to declare that—
5. There is a vacancy in the representation of North Carolina in the Senate of the United States.

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