

IN THE SENATE OF THE UNITED STATES.

MAY 14, 1888.—Ordered to be printed.

Mr. HOAR, from the Committee on Privileges and Elections, submitted the following

REPORT:

[To accompany resolutions, memorial, and communication concerning the election of Hon. David Turpie as a Senator from the State of Indiana.]

The Committee on Privileges and Elections, to whom were referred certain resolutions of the joint convention of the two houses of the State of Indiana concerning the election of Hon. David Turpie as United States Senator, and a memorial signed by F. Winter and seventeen others, members of the legislature of said State, protesting and remonstrating against the admission of Mr. Turpie as a member of the Senate of the United States from the State of Indiana, and a communication signed by F. Winter and John M. Griffiths in behalf of a committee appointed by the joint convention of said assembly of said State for the purpose of presenting to the Senate of the United States the facts attending the election of David Turpie as aforesaid, have considered the same and respectfully report:

Mr. Turpie received a certificate of his election from the governor of Indiana, which constitutes a prima facie title to his seat, and has been admitted thereupon to take the oath.

The two houses of the legislature of Indiana, having failed to concur in the appointment of a Senator, met in joint convention, and after sundry ballotings, in which no person had a majority of the votes cast, a ballot was had in which Mr. Turpie received two more votes than all others. A quorum of said joint convention and a quorum of each house was present and voted. The proceedings were in all respects regular, and resulted in a valid election of Mr. Turpie, unless the facts which the remonstrants offer to prove constitute a valid objection.

They offer to show, first that, there being a vacancy in the office of lieutenant-governor, the Hon. Robert S. Robertson was duly elected to fill such vacancy, and thereby became entitled by the constitution and laws of Indiana to preside over the senate; but that, on the meeting of the senate on the 6th day of January, 1887, being the first day of the session of the legislature at which said alleged election of Mr. Turpie took place, one Alonzo G. Smith usurped the office and function of such presiding officer, was supported and maintained in such usurpation by a majority of said body, excluded Mr. Robertson from said office and function, and continued so to preside and so to exclude Mr. Robertson during all the sessions of said senate, including its attendance on said joint convention, until after the said alleged election of Mr. Turpie.

Second. That before said alleged election the senate wrongfully, and for the purpose of obtaining a majority for said Turpie in said joint

convention, declared two members, who had been duly and lawfully elected members thereof, not entitled to their seats, and declared two other persons, who had not been duly and lawfully elected, to be entitled to such seats, and thereupon seated such persons, and that this was done without right, without evidence, and without hearing or debate; and that said persons so seated thereafter were present and voted for Mr. Turpie in said convention, and that without such votes said Turpie would not have received a majority.

The committee are of opinion that the facts offered, if proved, will not warrant the Senate in declaring the sitting member not entitled to his seat. There can be no doubt that the body in question was the constitutional senate of Indiana. The journals of both houses of the legislature of the State have been submitted to us. It appears that the body was recognized as the senate by the governor and by the house of representatives. Statutes, to which its constitutional assent was necessary, were enacted and have become part of the law of the State.

It seems to us that, without entering upon the question whether there was a vacancy in the office of lieutenant-governor which Mr. Robertson was duly elected to fill, the recognition of Mr. Smith by a majority of the Senate as its lawful presiding officer, and the recognition of the senate as a lawfully-organized body by the other house as well as by all its own members who remained and took part in its legislative proceedings, and by the executive department, require us to consider it as the lawful senate, lawfully organized so far as to be entitled to take part in the joint convention which elected a Senator of the United States.

We also think that the judgment of the senate of Indiana as to the title of Messrs. Branahan and McDonald, the two members in question, to their seats is binding upon the Senate of the United States. This body is made by the Constitution the judge of the elections, qualifications, and returns of its members. The senate of Indiana is likewise the judge of the election, qualifications, and returns of its own members. We must determine all questions arising out of the proceeding of the electors. But who sustain the character of electors is to be determined by the legislative body of the State. We can not inquire into the motive which controlled its judgment. In rendering that judgment, whether it shall give a hearing to parties, permit debate, examine witnesses, act upon evidence or without evidence, are matters within its own discretion. If that discretion were exercised in the manner charged by the remonstrants, a majority of the committee think that a great public crime was committed, for which the offenders are responsible to the people of Indiana. But we can not try the question.

A majority of the committee do not mean to be understood as now committing ourselves to an opinion upon the question whether the Senate can not refuse to admit to a seat a claimant who owes his election to a legislative body which is itself the result of fraud or crime, which has overcome the true will of the people, even if it have possessed itself of legislative authority, and of the technical evidence of a rightful character, or whether the judgments of such a body as to the title to seats of its individual members are entitled to any respect whatever. If that question shall hereafter unhappily arise it will be dealt with on its own merits. The committee ask to be discharged from the further consideration of the several memorials.