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IN THE SENATE OF THE UNITED STATES.

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FEBRUARY 2, 1892.—Ordered to be printed.

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

**REPORT:**

The Committee on Privileges and Elections, to whom was committed the investigation of the contest inaugurated by Mr. William H. Clagett, involving the right of Mr. Fred. T. Dubois to a seat in the Senate as Senator from the State of Idaho for the full term commencing March 4, 1891, and to which seat he was admitted on his prima facie case on the 8th day of December, 1891, having had the same under consideration, beg leave to submit the following report:

**STATEMENT OF FACTS.**

There is in this case really no material controversy in regard to the facts. The questions involved are of law, arising out of the construction of various constitutional and statutory provisions and their applicability to these facts. The sitting member, Mr. Dubois, and the contestant, Mr. Clagett, each claims to have been duly elected a United States Senator by the legislature of the State of Idaho for the full term above mentioned. Mr. Dubois claims to have been thus elected on Thursday, the 18th day of December, 1890; while Mr. Clagett claims to have been thus elected on Wednesday, the 11th day of February, 1891.

Inasmuch as each claimant claims to have been elected for precisely the same term, and as it is conceded that the election under which Mr. Dubois claims to have been elected was prior in time it follows that, if it shall be held he was duly elected, that is the end of the contest and he is entitled to retain his seat. Upon the other hand, should it be determined that Mr. Dubois was not duly elected, then, and only then, will it become necessary to inquire into the legality of the election of Mr. Clagett.

For the purpose of determining as to the validity of the election of Mr. Dubois, in so far as the facts are involved, it is only necessary to consider the record of the proceedings of the first twelve days of the first session of the legislature of the State of Idaho, commencing Monday, December 8, A. D. 1890. This record, together with accompanying affidavits, supplying an alleged omission in such record on one particular point, and the truthfulness of the allegation as to such omission, and of its proper correction by the affidavits referred to, are not denied by the contestant, disclose the following facts in reference to the organization of the legislature and the election of Mr. Dubois:

Before proceeding, however, to a statement of the facts thus disclosed and admitted, it may be said that the State of Idaho was ad-

mitted into the Union by act of Congress dated July 3, 1890. This act refers to and adopts the constitution which the people of the late Territory of Idaho had adopted prior to that time. The fourteenth section of article 21 of such constitution contains the following provision:

Within ten days after the organization of the legislature both houses of the legislature shall then and there proceed to elect, as provided by law, two Senators of the United States for the State of Idaho. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives shall be elected as such United States Senators, and shall be so declared by the presiding officer of the said joint session. The presiding officers of the senate and house shall issue a certificate to each of said Senators, certifying his election, which certificate shall also be signed by the governor and attested by the secretary of state.

The act of Congress admitting the State into the Union, including the recitals, reads in part as follows:

Whereas the people of the Territory of Idaho did, on the 4th day of July, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a constitution, which constitution was ratified and adopted by the people of said Territory at an election held therefor on the first Tuesday of November, 1889, which constitution is republican in form and is in conformity with the Constitution of the United States; and

Whereas said convention and the people of said Territory have asked the admission of said Territory into the Union of States on an equal footing with the original States in all respects whatever: Therefore,

*Be it enacted, etc.,* That the State of Idaho is hereby declared to be a State of the United States of America, and is hereby declared to be admitted into the Union on an equal footing with the original States in all respects whatever; and that the constitution which the people of Idaho have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed.

Section 20 of said act admitting the State reads as follows:

SEC. 20. That the legislature of the said State may elect two Senators of the United States, as provided by the constitution of the said State; and the Senators and Representatives of said State shall be entitled to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

#### THE REVISED STATUTES PROVIDING THE TIME AND MANNER OF ELECTING UNITED STATES SENATORS.

Sections 14, 15, 16, 17, 18, and 19 of the Revised Statutes of the United States, relating to the time and manner of the election of United States Senators, the same being a reenactment of the act of July 25, A. D. 1866, are for the convenience of the Senate here inserted. They read as follows:

SEC. 14. The legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress.

SEC. 15. Such election shall be conducted 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 such State, and the name of the person so voted for who receives a majority of the whole number of votes cast in each house shall be entered on the journal of that house by the clerk or secretary thereof; or, if either house fails to give such majority to either person on that day, the fact shall be entered on the journal. At 12 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 has received a majority of all the votes in each house, he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for Senator, and the person who receives the majority of all the votes of the joint assembly—a majority of all the members elected both houses being present and voting—shall be declared duly elected. If no per-

son receives such majority on the first day, the joint assembly shall meet at 12 o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote until a Senator is elected.

SEC. 16. Whenever on the meeting of the legislature of any State a vacancy exists in the representation of such State in the Senate, the legislature shall proceed on the second Tuesday after meeting and organization to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a Senator for the full term.

SEC. 17. Whenever during the session of the legislature of any State a vacancy occurs in the representation of such State in the Senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the legislature has organized and has notice of such vacancy.

SEC. 18. It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States.

SEC. 19. The certificate mentioned in the preceding section shall be countersigned by the secretary of state of the State.

#### ORGANIZATION OF THE LEGISLATURE.

On Monday, December 8, A. D. 1890, the first legislature of the State of Idaho met pursuant to the proclamation of the governor as required by section 14, article 21 of the constitution of the State.

#### ORGANIZATION OF THE HOUSE.

The house met at 12 o'clock meridian on Monday, December 8, A. D. 1890, in the hall of the house of representatives, in the capital of the State at Boise City. Neither the State constitution nor any statute made any provision for officers of the house. The house, therefore, was possessed of the inherent and exclusive power, not only of electing its own officers, but also of determining the number and kind of officers to be elected.

On the first day of the session, namely, Monday, December 8, 1890, the house of representatives, a quorum of members being present, elected a speaker and principal officers. The house was called to order on that day by Hon. H. J. Burkhart, speaker of the house of representatives of the fifteenth legislative assembly of the late Territory of Idaho at the hour of 12 o'clock m., whereupon Charles H. Reed, chief clerk of the house of representatives of the fifteenth session of the legislative assembly of the late Territory of Idaho, acting as the chief clerk of the house, with the consent of all, there being no protest, then read the proclamation of the governor of Idaho convening the State legislature on that date.

The certificate of the secretary of state was then read, certifying the names of the different persons elected members of the house of representatives of the first session of the legislature of the State of Idaho. The roll of members, as they appeared upon such certificate of the secretary of state, was then called. All being present, the oath of office was administered to the members of the house, respectively, by Hon. John T. Morgan, associate justice of the supreme court of Idaho. After prayer by Rev. L. W. Gowan, the election of a speaker having been declared in order, Mr. Emery, of Custer County, placed in nomination Mr. Frank A. Fenn, of Idaho County; Mr. Jones, of Boise County, placed in nomination Mr. Ballentine, of Ada County. A ballot was taken, which resulted as follows:

Mr. Fenn received 29 votes; Mr. Ballentine, 5; Mr. Emery, 1; Mr. Steunenberg, 1. Mr. Frank A. Fenn, having received a majority of all the votes cast, was declared duly elected speaker of the house, and was conducted to the chair by a committee consisting of Messrs. Price, Arm-

strong, and Cameron, appointed for that purpose by the temporary chairman. The committee presented Mr. Fenn, who was introduced to the house by Mr. Burkhart, the temporary presiding officer, as speaker of the house.

The oath of office was then administered to the speaker by Judge Morgan, associate justice of the supreme court of the State of Idaho; whereupon the house proceeded to the election of a chief clerk. Mr. Charles H. Reed, who had been acting as temporary chief clerk, was, on a ballot being taken, elected, and declared duly elected by the speaker chief clerk of the house for the ensuing session. A recess was then, on motion of Representative Armstrong, taken for one hour.

The recess having expired, the house was called to order at 2 o'clock p. m., December 8, Mr. Speaker in the chair and a quorum present, whereupon Mr. John Hunter was elected sergeant-at-arms; Miss Carry Sweet, assistant chief clerk; Mr. J. W. Jackson, doorkeeper. An enrolling clerk, an assistant enrolling clerk, an engrossing clerk, and an assistant engrossing clerk were also each duly elected, and all the above-named officers were declared, respectively, to have been duly elected on that date, December 8, A. D. 1890. A page and a messenger were also elected, after all which, on motion of Mr. Hawkins, the house adjourned until 10 o'clock a. m., December 9, 1890, the record of proceedings in the house journal being signed as follows:

F. A. Fenn, speaker; attest, Charles H. Reed, chief clerk.

No action was taken on that day, December 8, in the house looking to the possible election of any other officers on any future day; whether the house would elect any other officers during the session was uncertain. At 10 o'clock on the morning of Tuesday, December 9, 1890, the house of representatives reassembled, Mr. Speaker in the chair. Immediately after the journal was read, and which was then approved, a chaplain was elected. No other officer was chosen on December 9, 1890.

#### ORGANIZATION OF THE SENATE.

The senate of the State of Idaho also met at 12 o'clock meridian, Monday, December 8, A. D. 1890, in the senate chamber of the capitol of the State at Boise City. The State constitution of Idaho provides that the lieutenant-governor of the State shall be the presiding officer of the senate. The lieutenant-governor was Norman B. Willey, and at the hour and on the day just named, the members-elect of the senate being assembled in the senate chamber of the capitol at Boise City, a quorum being present, were called to order by Lieutenant-Governor Norman B. Willey, acting in virtue of a provision in the State constitution in the capacity of presiding officer of the senate.

After prayer by the Rev. Mr. Scidmore, Senator Gunn moved that M. C. Athey be elected secretary of the senate *pro tempore*, which motion, as will appear hereafter, prevailed. Mr. Athey was duly elected and so declared to be by the presiding officer, and he immediately entered upon the duties of his office. The president of the senate then read the proclamation of the governor, convening the legislature of the State of Idaho, at Boise City, on the 8th day of December, A. D. 1890. The president of the senate then called the roll of members as certified by the secretary of state, and a quorum, 16 in all—the whole number constituting the senate of the State of Idaho being 18—answered to their names. The oath of office was then administered to the senators-elect by Mr. Justice Sullivan, chief justice of the supreme court of the State of Idaho.

