

IN SENATE OF THE UNITED STATES.

MARCH 4, 1834.

Ordered to be printed.

Mr. POINDEXTER made the following

REPORT:

The Select Committee to which was referred the credentials of Asher Robbins, chosen a Senator in Congress from the State of Rhode Island for the term of six years, to commence on the fourth day of March, 1833; and, also, the proceedings of the Legislature of said State, convened on the last Monday of October, 1833, declaring the election of the said Asher Robbins void, who, thereupon, proceeded to elect Elisha R. Potter a Senator in Congress for six years to commence on the fourth day of March, 1833, instead of said Asher Robbins, whose election to fill said office had been declared void as aforesaid, have had the whole subject, so referred to them, under their serious and attentive consideration, and submit the following report:

That it appears by the credentials of Asher Robbins, and the proceedings of the General Assembly of the State of Rhode Island hereto appended, and marked A, that the Senate and House of Representatives of said State, then sitting in the city of Providence, met in Grand Committee in conformity to the usage of the Legislature in such cases, for the purpose of choosing a Senator to represent said State in the Congress of the United States; and that, on counting the ballots, it appeared that Mr. Robbins was elected by a majority of four votes, who was thereupon declared to be duly elected a Senator to represent said State in the Congress of the United States for six years from and after the fourth day of March then next following: that, having performed the duty for which the two houses had met, the Grand Committee was dissolved, and the members of each house repaired to their respective chambers. It further appears to your committee, that, on the twenty-eighth day of the same month of January, his Excellency Lemuel H. Arnold, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Asher Robbins as aforesaid, and caused the said commission, signed and sealed as aforesaid, to be delivered to the said Asher Robbins, which was presented to the Senate of the United States, in open session, on the fourth day of February, 1833; and, on motion, read and entered on the journals of the Senate. By virtue of the force and effect of the aforesaid commission, the said Asher Robbins, Senator elect from the State of Rhode Island, appeared in the Senate Chamber on the second day of

December, 1833, was duly sworn to support the constitution of the United States, and took his seat as a member of the Senate.

It further appears to your committee that, at a subsequent session of the General Assembly of Rhode Island, begun and held at the town of South Kingston, in said State, on the last Monday of October, 1833, certain proceedings were had relative to the election of the said Asher Robbins as above mentioned, which resulted in the adoption of a declaration or act of the said General Assembly, by which the election of Mr. Robbins is declared to be "null and void and of no effect," and the office vacated. Whereupon, at the same session of the General Assembly the two Houses met in Grand Committee on the first day of November, 1833, and proceeded to elect a Senator to represent the State of Rhode Island in the Congress of the United States for the term of six years, commencing on the fourth day of March preceding, to supply the vacancy created, or supposed to be created, by the act declaring the election of Mr. Robbins null and void: and the majority appearing to be in favor of Elisha R. Potter, the said Potter was thereupon declared to be duly elected a Senator in Congress from the said State for the term aforesaid, when the Grand Committee was dissolved and the members repaired to their respective chambers. That, on the fifth day of the same month of November, his Excellency John Brown Francis, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Elisha R. Potter as aforesaid, and cause the said commission, signed and sealed as aforesaid, to be delivered to the said Elisha R. Potter, which was presented to the Senate on the second day of December last, and on the fifth day of the same month referred to this committee. The documents relating to those proceedings are subjoined, and marked B. This statement of the case is deemed sufficient to show the questions which arise for the consideration of your committee, and which they now proceed to examine.

1. Was the commission of Asher Robbins made and executed in conformity with the provisions of the constitution of the United States, and the laws and usages of Rhode Island prescribing the time, place, and manner of choosing Senators to Congress?

2. Was Mr. Robbins, at the time of his election, eligible, according to the constitution of the United States, to the office of Senator?

3. Was he chosen by the *Legislature* of the State of Rhode Island?

If these questions be answered affirmatively, it will be unnecessary to inquire into the validity of the subsequent election of Mr. Potter, or into the power of the *Legislature* to create a vacancy, by annulling the act of their predecessors; and therefore your committee limit the views which they deem it proper to take of the subject referred to them, to the objections made to the commission of Mr. Robbins on the ground that the *Legislature* by whom he was chosen had no power to elect a Senator to Congress, and that the governor who signed and sealed his commission was not, at the time, competent to exercise any power, or perform any duty, in his official character. These objections rest on the same general principle; and if they are supported by the facts disclosed in the case, connected with the constitution and laws of the State, it will *then* be proper to examine the claims of Mr. Potter to a seat in the Senate, and not otherwise.

The constitution of the United States provides that "each house shall be

the judge of the elections, returns, and qualifications of its own members." Article 1, sec. 5.

The members of the House of Representatives are to be chosen by the people of the several States having the qualifications requisite for electors of the most numerous branch of the State Legislature. The members of the Senate are to be chosen by the Legislatures of each State, and the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Congress having passed no law on the subject, we must look into the statutes of the several States for those regulations, and conform our action to them. The Senators from each State are equal in number, and cannot be increased or diminished even by an amendment of the constitution, without the consent of the States respectively. They are chosen by the States as political sovereignties, without regard to their representative population, and form the federal branch of the National Legislature. The same body of men, which possesses the powers of legislation in each State, is alone competent to appoint Senators to Congress for the term prescribed in the constitution. In the performance of this duty, the State acts in its highest sovereign capacity, and the causes which would render the election of a Senator void, must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their Legislatures by the constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he, at the time of his election, a citizen of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs, and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its Legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the Legislature, or into the peculiar organization of the body for reasons to justify the Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the Legislature, whose elections were contested, might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void, who pos-

seced the requisite qualifications, and was chosen according to the forms of law and the constitution.

These general views are offered to show that contested elections in the popular branch of Congress, where the people exert, in their primary capacity, the right of suffrage under various limitations and restrictions in the choice of Representatives from certain prescribed districts, open a much wider field of inquiry and investigation than a like contest for a seat in the Senate, which is a body wholly federative in its character and organization, and whose members hold their appointments from, and represent, the States as political sovereignties. Your committee having regard to these rules as applicable to all contested elections in the Senate, proceed to apply them to the case now under consideration.

It is admitted that the sitting member, Asher Robbins, possesses all the qualifications required by the constitution of the United States to be a Senator in Congress, and that his commission, as such, is in due form according to the laws and usages of Rhode Island. These points being conceded, the remaining and the only question to be decided, is, was the body by which he was chosen a Senator, the *Legislature* of Rhode Island? or, was it merely an assemblage of citizens without authority to pass laws, prescribing that which is right, and prohibiting that which is wrong, to the people of the State? On this ground both parties seem content to rest their claims to a seat in the Senate.

The General Assembly of Rhode Island, as at present organized, consists of two separate and distinct branches; the Senate, over which body the governor presides, and the House of Representatives—each chosen by the people of the State who are freemen or freeholders, and entitled to vote at elections. The governor and Senate are elected annually. The members of the House of Representatives semi-annually. To constitute a Legislature capable of enacting laws, or performing any other duty confided to that body by the constitution of the State or of the United States, it is essential that there should be in existence, at the same time, a governor, or some officer authorized to perform the executive functions; a Senate, and House of Representatives. In the absence of either, the other branches could not perform any act which would be obligatory on the people of the State. We are then brought to the inquiry whether these component parts of the Legislature of Rhode Island were assembled at Providence, in January, 1833, when Mr. Robbins was elected in Grand Committee a Senator to Congress? It is alleged, on the one hand, that the governor and Senate had ceased to exist in the month of May, 1832, by the expiration of the term of one year for which they had been elected, and the failure of the people to elect their successors by a majority of all the votes given in, according to the constitution and laws of the State. On the other, it is maintained that the powers of the governor and Senate were, by law, extended until their successors should be duly chosen and engaged, for which purpose special elections were ordered and held, but without success, prior to the time at which Mr. Robbins was elected. For the purpose of forming a correct judgment of this anomaly in the constitution of the State, it is necessary to recur to the ancient charter of Charles the Second of England, granted to the colony of Rhode Island and Providence Plantations in 1663, which has not been superseded by a written constitution since the revolution; and to the various laws which have been enacted, modifying the provisions of that charter in such manner as to adapt it to the condition and convenience of the people of the State. By the charter, certain political powers, rights, and

privileges, are granted to the inhabitants of the colony, among which are the following:

"And, further, we will and ordain, and by these presents, for us, our heirs, and successors, do declare and appoint that, for the better ordering and managing of the affairs of the said company and their successors, there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed; which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of, and concerning the lands and hereditaments hereinafter mentioned to be granted, and the plantation thereof, and the government of the people there."—*Charter of R. I., page 6th, Digest 1822.*

"And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants, and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be from time to time thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations. And, further, we do, of our especial grace, certain knowledge, and mere motion, give and grant unto the said governor and company of the English colony of Rhode Island and Providence Plantations in New England, in America, and their successors, that the governor, or, in his absence, and by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the General Assembly; and that they, or the greatest part of them then present, whereof the governor or deputy governor, and six of the assistants, at least to be seven, shall have, and hereby have, given and granted unto them full power and authority from time to time, and at all times hereafter, to appoint, alter, and change such days, times, and places of meeting and general assembly, as they shall think fit, &c." * * * * *

"And from time to time to make, ordain, constitute, or repeal, such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet for the good and welfare of the said company, and for the government and ordering of the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall inhabit, or be within the same, so as such laws, ordinances, and constitutions, so made be not contrary and repugnant unto, but as near as may be agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."—*Digest of 1822, pages 6, 7, & 8, of Charter.*

"And further, our will and pleasure is, and we do hereby for us, our heirs and successors, establish and ordain that yearly, once in the year forever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere, if urgent occasion do require, the governor, de-

