

IN THE SENATE OF THE UNITED STATES.

AUGUST 21, 1852.

Ordered to be printed.

Mr. BRIGHT made the following

REPORT:

*The select committee to whom was referred the memorial of the Hon. David L. Yulee, claiming the seat in the Senate held by the Hon. Stephen R. Mallory, from the State of Florida, together with sundry documents therewith, report:*

That they have examined the law and the facts connected with this case, they have heard the contestant by able counsel, and the sitting member in person, and after giving to each that consideration which the importance of the questions embraced merits, find, that on the 13th day of January, 1851, the General Assembly of Florida met in convention of the two Houses to choose a Senator of the United States to supply a vacancy which would occur before another constitutional session.

The President of the Senate presided, and upon a call of the roll, a poll *viva voce* was taken of the members, pursuant to the requirements of the constitution of the State, and twenty-nine responded David L. Yulee, and twenty-nine Blank, whereupon the presiding officer declared that no choice had been made; they then proceeded to a second and third vote, with substantially the same result. On the 15th of January they again met in convention for the same purpose, and upon a call of the roll thirty-one members responded R. S. Mallory, and twenty-seven votes for Mr. Yulee and others—whereupon the president declared Mr. Mallory to be duly elected.

Neither the record nor any other evidence in the case shows that objection was made to any of those proceedings, or that their legality was questioned in or out of the convention at the time.

The certificate of election was granted to Mr. Mallory, and he having been qualified, now holds the seat.

Mr. Yulee contests his right to the seat on the ground that he was himself elected at the first vote, because there was a quorum of each House present as appears by the journals, and he being the only qualified person voted for, had a majority of the legal votes. Those who responded "blank," he contends voted for no qualified person, and waived their electoral rights as effectually as if they had been silent.

Mr. Mallory opposes to this inference a resolution of the two houses adopted in 1845 by concurrent vote, which has never been rescinded, and is in the following words:

*"Resolved, That a majority of all the members elect, composing the two houses of General Assembly, shall be necessary to determine all elections devolving upon that body."*