Calendar No. 128.

63D CONGRESS, 2d Session. | SENATE. | REPORT No. 160.

CREDENTIALS OF BLAIR LEE AS SENATOR FROM MARYLAND.

JANUARY 19, 1914.—Ordered to be printed.

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

REPORT.

[To accompany S. Res. 247.]

The Committee on Privileges and Elections, to whom was referred the credentials of Blair Lee as a Senator from the State of Maryland, have considered the same, and submit the following report:

In this case the governor of the State of Maryland has certified, under the seal of his State, as follows:

That at an election held on Tuesday, November 4, 1913, pursuant to the law of the State of Maryland and a writ of election issued by the governor of that State in compliance with the provisions of the seventeenth amendment to the Constitution of the United States by the electors in said State having the qualifications requisite for electors of the most numerous branch of the State legislature, Blair Lee, of Montgomery County, was by said electors duly chosen a Senator from said State in the Senate of the United States to fill the vacancy in the unexpired term of Isidor Rayner.

That at said election so held as aforesaid on Tuesday the 4th day of November, 1913, the candidates for the said office of United States Senator were Blair Lee, Democrat; Thomas Parran, Republican; George L. Wellington, Progressive; Finley C. Hendrickson, Prohibitionist; and Robert J. Fields, Socialist, each of said candidates having been duly nominated in accordance with the primary-election law of said State.

That the name of each of said candidates was placed upon the ballots at the said election held as aforesaid, on Tuesday, November 4, 1913, as required by the laws of said State, and the returns from said election having been duly canvassed by the board of State canvassers in accordance with law, the result of said election has been declared and certified by said board as follows:

That—

	Votes.
Blair Lee received	112,485
Thomas Parran received	73,300
George L. Wellington received	7,033
Finley C. Hendrickson received	2,405
Robert J. Fields received	2,982

all of which appears from the certified copy of the report made by the board of State canvassers, and hereto annexed, which I certify to be full, true, and correct, as follows:

DECLARATION OF THE RESULT OF THE ELECTION OF 1913 FOR THE OFFICE OF UNITED STATES SENATOR.

(Made by the State board of canvassers.)

We, the undersigned, constituting a majority of the board of State canvassers of the State of Maryland, in pursuance of the power and authority vested in us, under and by virtue of the provisions of section 85 of the election law, do hereby certify that at an election held in said State on Tuesday, November 4, 1913, for a United States Senator to fill the unexpired term of the late Senator Isidor Rayner, it appears from the certified copies of the returns of said election that—

	Votes.
Blair Lee received	112,485
Thomas Parran received	73,300
George L. Wellington received	7,033
Finley C. Hendrickson received	2,405
Robert J. Fields received	2,982

We therefore determine and declare that Blair Lee, having received the greatest number of votes cast for the several candidates for said office, has been and is duly elected United States Senator to fill the unexpired term of the late Senator Isidor Rayner.

In witness whereof we have hereunto set our hands this 20th day of November, 1913.

ROBERT P. GRAHAM,
Secretary of State.
EMERSON C. HARRINGTON,
Comptroller of the Treasury.
MURRAY VANDIVER,
State Treasurer.
C. C. MAGRUDER,
Clerk of the Court of Appeals.

Included in the same certificate of the governor is a copy of the writ of election issued by him on the 2d day of August, 1913, which is as follows:

WRIT OF ELECTION.

To the people of the State of Maryland, and to the members of the several boards of supervisors of elections of Baltimore City and the several counties of the State, and to the sheriffs of Baltimore City and the several counties of the State, and to the board of police commissioners for the city of Baltimore, greeting:

Whereas a vacancy now exists in the term of a United States Senator from Maryland, caused by the death of the late Senator Isidor Rayner; and

Whereas I have heretofore, by virtue of the authority vested in me by the Constitution of the United States, temporarily appointed Senator William P. Jackson to occupy a seat in the United States Senate "until the next meeting of the legislature" of this State:

Therefore, I, Phillips Lee Goldsborough, governor of the State of Maryland, acting by and under the authority and direction contained in the seventeenth amendment to the Constitution of the United States, hereby issue, publish, and declare this my writ of election for a special election to be held throughout the State of Maryland on Tuesday, the 4th day of November, 1913; and I do hereby direct that a special election shall be held on that day in order that there may be chosen at said election a Senator of the United States from the State of Maryland to fill said vacancy and to represent the State of Maryland in the Senate of the United States until the end of the term for which said Senator Isidor Rayner was originally elected.

And I further order, declare, and direct that the Senator to be chosen by virtue of this writ shall be nominated and elected in conformity with all the provisions of the general election laws and State-wide primary election laws of this State made and provided for the nomination and election to an office filled by the vote of all the registered voters of the State of Maryland.

To this end and as authority and direction therefor have you then and there this writ.

Witness my hand as the governor of the State of Maryland this 2d day of August, 1913, and the great seal of the State of Maryland.

[GREAT SEAL.] P. L. GOLDSBOROUGH.

By the governor:

ROBERT P. GRAHAM,
Secretary of State.

Your committee holds that the certificate of the governor of Marvland sets forth all the facts necessary to show the election of Blair Lee in substantial conformity to the provisions of the seventeenth amendment to the Constitution of the United States and in accordance with the laws of the State of Marvland and to entitle him to a seat in the Senate of the United States.

The facts in the case, about which there is no dispute, are as follows:

Isidor Rayner was elected United States Senator by the Legislature of Marvland, in January, 1910, for a term of six years, ending March 4, 1917.

On November 25, 1912, Senator Rayner died, and four days later the governor of Maryland, in pursuance of the constitutional provision that "if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointment until the next meeting of the legislature, etc.," appointed William Purnell Jackson, who, upon presenting his credentials, was sworn in as Senator.

The first session of the legislature of Maryland since that time began on January 7, 1914.

On May 31, 1913, the seventeenth amendment to the Constitution of the United States went into effect by the proclamation of the Secretary of State.

That amendment provides among other things, that "When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies, provided that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct."

In obedience to this constitutional requirement and acting upon the advice of the attorney general of the State, the governor of Maryland on the 2d day of August, 1913, issued a writ of election to fill the vacancy in the representation of the State in the Senate, which had been caused by the death of Senator Rayner, and to which Senator Jackson had been temporarily appointed prior to the adoption of the amendment.

The writ of election directed that the election should be held on Tuesday, November 4, 1913, and that the Senator should be nominated and elected in conformity with all the provisions of the general election laws, and State-wide primary election laws of Maryland, made and provided for the nomination and election to an office filled by the vote of all the registered voters of that State.

This writ of election, thus issued by a Republican governor, acting upon the advice of a Democratic attorney general, was acquiesced in and acted upon by all the political parties of the State.

Proceeding under the provisions of the State primary laws, Blair Lee, Thomas Parran, George L. Wellington, Finley C. Hendrickson, and Robert J. Fields became the candidates, respectively, of the Democratic, Republican, Progressive, Prohibition, and Socialist parties.

During the campaign which followed, the propriety of the governor's action in calling the election was not challenged anywhere within the State, and the vote cast for Senator at the election was as great as that cast for any State officer balloted for at that election.

When the voters of Maryland went to the polls on that day they found upon their ballots the names of the five candidates for United States Senator, and substantially all the electors availed themselves of the new privilege so recently conferred by the seventeenth amendment by registering in the usual orderly and lawful way, their choice as between the candidates.

That the election was fair, entirely untainted by fraud or corruption of any kind, is freely conceded, and that the result is a free, full, and fair expression of the popular will of the voters of Maryland is nowhere denied.

The seventeenth amendment required that the governor should issue his writ of election in case of the happening of a vacancy in the representation of his State. Such a vacancy had happened. The people under the provisions of the new amendment then in force had the right to elect. The only question to be considered was as to whether there was in existence appropriate election machinery for the expression of the popular will, and it was found that such machinery had been provided both for nomination and election. In other words, there was no obstacle in the way of an orderly and lawful election as contemplated by the seventeenth amendment.

Under these conditions the governor issued the writ of election, nominations were made, and the election held, with the result that Mr. Lee received 112,485 votes, while the total vote of all the opposing candidates was 85,720.

As already stated, all political parties participated in the election, and it is a matter of gratification that all have acquiesced not only in the action of the governor in calling the election but in the result.

The Republican governor of Maryland who ordered the election has not hesitated to certify to the election of a Democratic Senator, and your committee is unable to discern any reason why this election of a United States Senator by the people of a sovereign State—an election conceded to be fair in all respects—should be questioned here.

It is contended by Senator Jackson that if the election of Mr. Lee should be found to be valid in all respects, yet he would not be entitled to a seat in this body until the 7th of April, 1914, that being the day fixed by the statute of Maryland for the adjournment of the legislature of that State, which is now in session. His contention is that although section 3, Article I, of the Constitution, under which his appointment was made, provided that "if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature," yet that under legislative construction of that section his tenure of office would have continued until an election by the legislature; and in case of a failure by

the legislature to elect, until the end of the session of that legislature; and that under the last clause of the seventeenth amendment, which provides that "this amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution," his right to a seat in this body can not be challenged until the expiration of the extreme limit of time which he might have held his seat if the seventeenth amendment had not been adopted.

The committee gave much consideration to these contentions, but have been unable to yield their assent thereto.

Under the provisions of the Constitution which were in force at the time of Senator Jackson's appointment, his tenure of office was most uncertain of duration.

First. The governor, immediately after making the appointment, might have called the legislature in special session, which might have proceeded to the election of a Senator, in which event Senator Jackson's term would have ended immediately upon the presentation and approval of the credentials of the person so elected.

Second. If the Legislature of Maryland, in regular session, having the power so to do, should elect a successor to Senator Rayner at the time fixed by the Federal statute in force prior to the adoption of the seventeenth amendment, the person so elected would be entitled to his seat here as soon as the Senate could pass upon his credentials, or

Third. According to the construction contended for, in the event that the legislature in regular session should fail to elect a Senator, the Senator might have held office until the end of that session.

Senator Jackson's term might have been a very short term, as in the event of an election at a special session of the legislature; it might have been prolonged until an election by the legislature in regular session, or it might be still further prolonged to the end of the session of a legislature that had failed to elect. But in any event he could only hold until the vacancy was filled by an election, or until the body having the duty to elect had failed in its duty and adjourned without performing it. In no event could he hold the office after a valid election had occurred. Now, when the seventeenth amendment was adopted and became operative, the legislature could no longer elect a Senator, so that Senator Jackson's term could not be limited by a legislative election, and such being the case, the position that he should now hold office until a legislature which has no power to elect shall fail to elect and adjourn without electing is not regarded as tenable.

Your committee is of the opinion that Senator Jackson's right to a seat in this body terminates upon the election and qualification of the person lawfully elected to fill the vacancy referred to, without regard to the manner of such election, and that the vacancy occasioned by the death of Senator Rayner having been filled by the election of Blair Lee, Senator Jackson has no right to hold his seat longer and exclude from this body the man who has been regularly and fairly elected by the voters of Maryland and duly commissioned by the governor of that Commonwealth.

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Calendar No. 128.

63D CONGRESS, 2d Session. | SENATE. | REPT. 160, Part 2.

CREDENTIALS OF BLAIR LEE AS SENATOR FROM MARYLAND.

JANUARY 21, 1914.—Ordered to be printed.

Mr. SUTHERLAND (for himself and Mr. DILLINGHAM), from the Committee on Privileges and Elections, submitted the following

VIEWS OF A MINORITY.

[To accompany S. Res. 247.]

I find myself unable to agree with the majority of the Committee on Privileges and Elections in holding that Blair Lee is entitled to a seat in this body as a Senator from the State of Maryland. The report of the committee in support of the applicant's right to the seat, while it recites the facts in detail and discusses at some length the contention of Senator Jackson, the sitting member, that he is entitled to retain his seat until the adjournment of the Maryland Legislature, fails to set forth the reasons for the conclusion of the committee that the election of Blair Lee was valid. The precise ground upon which this conclusion of the committee rests is therefore more or less a matter of surmise.

I.

It was contended before the committee that the election of Mr. Lee could be sustained upon the grounds (1) that the provisions of the seventeenth amendment, that "When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies," carries with it as an incident the power on the part of the governor, thus authorized to issue a writ of election, to fix the conditions upon which the election shall be held; and (2) that the laws of Maryland in force prior to the adoption of the seventeenth amendment constitute sufficient legislative foundation for the election. I am unable to agree to either view.

1. The seventeenth amendment provides that two Senators from each State shall be elected by the people thereof, instead of being chosen by the legislature, as provided in the original Constitution.

This amendment, however, left intact paragraph 1, section 4, article 1 of the Constitution, which provides:

> 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.

This provision is mandatory and exclusive in form. The right and duty of prescribing the various elements of an election is thereby devolved upon the legislature alone. The legislative authority is not limited to general elections; it applies to all elections, special as well as general.

By the seventeenth amendment when a vacancy happens the authority of the executive is limited to issuing the writ of election, a purely ministerial act. If there were no other provision in the constitution governing the subject there might be reason for claiming that the authority to issue a writ of election carried with it by implication the authority to fix the time, places, and manner of holding such election, but here the constitution in express terms devolves the latter power upon the legislature, and it is contrary to all reasonable rules of construction to hold that an authority thus *expressly* vested in one body is taken away and given to another by mere *implication*. The meaning of the constitution seems to be perfectly clear. It is that the legislature must fix the time, places, and manner of holding *all* elections, including elections to fill vacancies, and, this having been done, in case of a vacancy the governor issues his writ of election, but such legislative foundation must exist before the executive act of issuing the writ can be effective. The reasons are obvious. The legislature will prescribe these conditions by general law which will be the same in all cases, while if the power is held to be in the governor to fix them in connection with the issuance of his writ the rules may differ in every case. In one case he may call an election upon 2 days' notice, in another upon 60 days' notice; in one case he may prescribe that the places of holding the election shall be at the various polling precincts, in another at the various county seats; in one case that the manner of voting shall be by Australian ballot, in another by a totally different form of vote. If the governor has the incidental power to fix the time, it follows of course that he likewise has the power to fix the places and manner, since all are equally necessary to an election. Every condition of an election would therefore rest not upon uniform law, but upon the unrestrained discretion of the governor in each case. Such a result, as it seems to me, was never contemplated by the constitution.

The legislature has been directed, without qualification, to prescribe the time, places, and manner of holding elections. Is not a *special* election an election? But to hold that the governor has this power in case of a vacancy is to read into the constitutional provision an exception denying the power of the legislature in the case of special elections and to introduce a limitation, which the Constitution does not contain, confining the power of the legislature to *one class* of elections, when the plain words extend it to *all* elections. I can not assent to the view that a power which has been *expressly* vested in one body can be thus held to belong to another by *implication*.

If the power to fix the time, places, and manner is to be exercised by the governor in the case of elections to fill vacancies, what becomes

of the reserve power of Congress to "make or alter such regulations"? In the general clause already quoted the Constitution has been careful to reserve to Congress the power to make or alter such regulations; namely, such regulations as the legislature is authorized to prescribe. It was evidently contemplated that the legislature might in some instance fail to prescribe the time, places, and manner of holding elections, in which event Congress could supply the omission by itself making the regulation; and it was further contemplated—and this is no less important—that the legislature might make unwise or improper regulations, in which event Congress could correct them by alteration; but if the power to make regulations in the case of *special* elections belongs to the governor Congress is powerless to interfere, however much it may disapprove the action of the governor, since no supervisory power over the action or want of action on the part of the governor is reserved. It is not to be supposed that the Constitution intended that the supervisory power of Congress deemed so essential in the case of elections generally should be entirely wanting in the case of special elections.

2. It is, however, contended that if legislative authority for the holding of this special election be necessary, such authority is to be found in the statutes of Maryland in force prior to the adoption of the seventeenth amendment. It is conceded that no such legislation has been passed since the adoption of the seventeenth amendment.

The report of the committee unfortunately contains no reference to any such statute, so that I am not able to refer with certainty to the provisions of the Maryland law that are particularly relied upon. I have, however, read with some care the various sections of the Maryland election law which by any possibility could be held to apply to the election of a United States Senator either for a regular term or to fill a vacancy. I have not been able to find any language which in terms or by the most liberal construction seems to me to apply. The constitution of Maryland provides for the election in specific terms of various State officers, naming them separately, and the laws of Maryland provide specifically for the election of certain other State officers and, in addition, for the election of Representatives in Congress and presidential electors. Certainly these constitutional provisions and statutes applying in terms to specifically named officers can not by any stretch of interpretation be held to apply to a United States Senator. The other statutes of Maryland relating to elections simply prescribe the character of the election officials, their duties, the registration of voters, and similar matters. In addition to this *there is a specific primary law expressly applicable to United States Senators.* This law prescribes how nominations for United States Senators shall be made at primary elections and provides that the names of person for whom the greatest number of votes were cast by each political party, respectively, shall be certified to both houses of the General Assembly of Maryland (acts of 1908, chap. 400, sec. 7); and provides further that the candidate so receiving the greatest number of votes cast by the voters of said party in any county, etc., shall be entitled to and receive the votes of the candidates of such political party who may be elected to represent said county, etc., in the general assembly next ensuing, for the position of United States Senator for the term to be filled by the said general assembly (idem, sec. 9).

It not only appears, therefore, that there is no affirmative provision in the Maryland statutes covering the election of United States Senators by the people, but any such construction of the statutes is negatived by this primary law affirmatively providing for a popular *nomination* by the people and an *election* by the legislature.

The attention of the committee, however, was called to the general interpretation clause found in the article on elections, which reads as follows: "The word 'election' as used in this article shall be construed to include elections had within any county or city for the purpose of enabling voters to choose some public officer or officers under the laws of this State or of the United States," and it was urged that this evidenced an intention on the part of the legislature that the laws by which the election machinery is provided and regulated should apply to United States Senators. An interpretation clause, however, as it has been many times held, will not alter the sense of a word or phrase the specific meaning of which to the contrary is made perfectly clear by the context.

The legislature sometimes recognizes this rule by express language, as for example in section 1 of the Revised Statutes of the United States where the interpretation of various words is declared "unless the context shows that such words were intended to be used in a more limited sense." But the rule is the same whether included in the interpretation clause or not. Thus in Dean of Ely *v.* Bliss (2 De G. M. & G. 471), it is said:

> There has been a great deal of discussion, which I am not surprised at, in regard to the meaning of the words; but it is to be observed, that although the meaning of the words is defined by the statute, yet that statute declares (what would have been supplied if it had not been so expressed) that the words are not to have that meaning attached to them in the interpretation clause if a contrary intention appears.

The general rule is stated in Wilberforce on Statutes, page 297, that—

> The real purpose of an interpretation clause is to define the meaning of words when nothing else in the act is opposed to the particular sense which is thus placed upon them.

In 2 Sutherland's Statutory Construction, section 359, some English cases are cited to the effect that the statutory interpretation clause "could be satisfied by applying it to the word where there was nothing in the context to interpret it otherwise," and that the clause "should control where the words occur without being accompanied by any others tending to show their meaning; or to interpret words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." And again, in section 360, the same author says:

> On the other hand, general statutory definitions and rules of interpretation will apply when the statute in question is not plain; or, in other words, does not define and interpret itself. Where positive provisions are at variance with the definitions it contains, the latter, it seems, must be construed as modified by the clear intent of the former, on the principle that the special controls the general.

So it is said in 36 Cyc., 1106:

> But the interpretation clause should be used only for the purpose of interpreting words that are ambiguous or equivocal and not so as to disturb the meaning of such as are plain.

In L. R. 7 H. of L., 493, it is said:

> Even for the purpose of the act of Parliament, it appears to me that the interpretation clause does no more than say that where you find in the act those words "personal chattels" they shall, unless there be something repugnant in the context, or in the sense, include fixtures.

In the case of the Queen against the Justices of Cambridgeshire, 7 Ad. & El. page 491, the court said:

> But we apprehend that an interpretation clause is not to receive so rigid a construction; that it is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances. We rather think that it merely declares what persons may be comprehended within that term where the circumstances require that they should.

Other cases to the same effect might be cited.

Applying these rules to the case under consideration it seems clear that the interpretation clause can not be held to extend the various or any of the election laws of Maryland to the election of a United States Senator, since in every case where the word "election" is used the intention of the legislature to not have it so applied unmistakably appears. Not only is this so, but this intention is emphasized by the specific provisions of the Maryland statutes providing for the nomination of United States Senators by the people and their election in pursuance of such nominations by the legislature. That the interpretation clause is not to receive the rigid application for which Mr. Lee's advocates contend is apparent upon a moment's reflection. The language of this clause is that the word "election" is to include elections of officers under the laws of the State or the United States.

Specific provision is made for the election of Representatives in the Congress of the United States. Is the word "election" as here used to be construed to include elections of State officers or to include the election of any other than Representatives in Congress? Clearly not. Again, provision is made for the election specifically of the mayor of Baltimore city on the Tuesday next after the first Monday in the month of May, 1899, etc. Is the word "election" here to be construed to include the election of officers to be elected under any law of the United States or any other officer than the one specifically named? Again, clearly not. These illustrations emphasize the rule laid down by the authorities that the interpretation clause is intended only to be resorted to in cases of doubt and is not to be followed where the contrary intention is clearly apparent in the substantive legislation.

II.

I find myself also unable to agree with the majority of the committee with respect to the time when Senator Jackson's term of office will expire.

The seventeenth amendment contains the following saving clause:

> This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

I think this provision was inserted out of abundance of caution to prevent the seventeenth amendment being so construed as to legislate any sitting Member out of office. In the case of a Member elected