

IN THE SENATE OF THE UNITED STATES.

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JANUARY 25, 1892.—Ordered to be printed.  
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Mr. TURPIE, from the Committee on Privileges and Elections, submitted the following

REPORT:

The Committee on Privileges and Elections, to whom was referred the papers, evidence, and certificates in the case of Wilkinson Call, and of the contestant, R. H. M. Davidson, respecting the question of a title to a seat in this body for the State of Florida, have had the same under consideration and have instructed me to report the following resolution:

*Resolved*, That the Hon. Wilkinson Call, of Florida, was duly elected by the legislature of the said State on the 26th day of May, 1891, a Senator of the United States from said State for the term of six years, commencing on the 4th day of March, 1891, and that he is lawfully entitled to a seat in the Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1892.—Ordered to be printed.

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

REPORT:

The Committee on Privileges and Elections, to whom were referred the papers in the case of R. H. M. Davidson, contestor, against Wilkinson Call, contestee, concerning the right to a seat in this body for the State of Florida, have had the same under consideration, and have instructed me to make the following report:

In April, 1891, the legislature of the State of Florida met and was duly organized at the time and place appointed by law. On the second Tuesday after such organization, being the 21st day of April, 1891, the two chambers of which it was composed held a session and voted, each separately, for the election of a United States Senator. No one was chosen at this election, and it was so declared and entered upon the journals of the respective houses. On the following day, being Wednesday, the 22d of April aforesaid, the legislature met at noon in joint assembly, and one vote was taken for Senator, which resulted in no election. And on every succeeding day, except Sundays, until the 26th day of May, 1891, they met and took one vote in the same manner, with the same result. On the 26th day of May, 1891, the joint assembly met as before, and upon a vote being taken for United States Senator it was found that Wilkinson Call had received a majority of the votes of those present and voting, the same being also a majority of all the members elected to both houses of the legislature. Thereupon Mr. Call was declared duly elected.

The validity of this election is questioned upon the ground that there was not a quorum of the State senate present and voting at the time it occurred. This objection is based upon the position that the joint convention or assembly in such cases is composed of the two houses as such, and that therefore a quorum of each must attend to properly form such convention. The law of the case is found in the act of Congress of July 25, 1866, being chapter 1, title 2, of the Revised Statutes, concerning the election of United States Senators, an act adopted by the constitution of the State of Florida in respect to such elections, and so in a double sense to be regarded as the law of this case. But if the constitution of Florida had provided in express terms that a quorum of both houses was necessary to constitute a joint assembly this would not be the law unless the same is required by said act of 1866. The Federal law is paramount.

This act provides that "the *members* of the two houses shall convene in joint assembly," etc. The joint assembly is thus composed not

of the two houses, but of the members thereof. The joint assembly is not a junction or union of the two houses as such; it is not a merger of the two houses into one of either; but it is a body distinct and separate from either as such, and has by the words of the enactment a quorum of its own prescribed and defined, to wit, "a majority of all the members elected to both houses," without any reference to a quorum either of the senate or the house. The joint assembly is authorized and created by the act of Congress, and when the circumstances have transpired which make it necessary to convene the same, all the members of both houses, without any reference to the further action of either house as such, are entitled to seats in it, and may join together and cooperate as members in the choice of a Senator until one is elected. It has always been conceded that the object of the statute of 1866 was to prevent the inaction or neglect of either house, that is, of a majority or quorum of either house, from delaying or defeating the will and voice of the majority of the whole legislative body.

The two houses, as such, are given their day in court—are given, under a previous provision of the act, an opportunity to make the choice of Senator. After they have failed to make a choice, to hold that a quorum of each is necessary to make a joint assembly is to give them a chance to repeat this failure—it is to vitiate the very purpose of the enactment and to reinstate the evil which it was designed to remedy. It was not the intention of the makers of the law of 1866 to place or leave it in the power of any minority of the whole number, or of a quorum in either house, as such, to prevent or postpone the representation of the State in this body. For this reason the law operates, so far as it relates to the joint meeting, upon members as individuals, not as component parts of the respective bodies to which they may belong; and for this reason also a majority of the whole number of members is constituted the quorum of the joint assembly; that is, the number requisite to transact its business in the senatorial election. If the minority of the members, absent at the time of Mr. Call's election, had all been present and voted, this would not have changed the result. It seems unreasonable, under the provisions of this statute or any other, to give a greater effect to the absence and nonaction of this minority than to their presence and action.

It seems yet more unreasonable to hold that a quorum of the senate, in Florida 17 members, should defeat the action of thrice their number under a statute designed expressly to provide for the permanent and, as far as practical, the continuous representation of the States in the Senate of the United States.

It is implied in the argument made against the right of the contestee that this construction of the act is in conflict with the section of the Constitution which provides that Senators shall be chosen by the legislature—that this is composed of two houses—and that a quorum of each is practically and legally the house; that without a quorum there is no house. We grant that the quorum is in legal effect the house. But the term legislature in this clause is not to be construed technically with reference to the separate chambers which may exist within it, but as designating the collective number of all the persons composing it. This is clear from the fact that one of the States at least, Pennsylvania, had at the time of the adoption of the Constitution only one legislative chamber. Besides this the word legislature is commonly used in this way—as the word magistracy is used and indeed is defined to mean "the body of magistrates" in a State or country. Legislature in this section means the body of legislators of the State, without refer-

ence to the different chambers, as such, in which they may serve. The joint assembly created by the act of 1866 is thus in the fullest sense of the term the legislature of the State, its whole number being equal to that of all the persons elected to either branch of the legislature and its quorum being a majority of that number.

In these views the recent decisions of the Senate agree.

The legislature of Florida is composed of a house of 68 and a senate of 32 members, in all 100. Fifty-two members attended the joint assembly of the 26th of May aforesaid, were present, and voted. Mr. Call received of this number the votes of 51. So that the joint assembly contained and the person chosen received the votes of a majority of all the members elected to both houses.

We are therefore of the opinion that Mr. Call was duly elected.

The appointment by the governor thereafter of Mr. Davidson, under the erroneous supposition that a vacancy existed in the office of United States Senator, was an act of mere irrelevancy which it is not necessary further to notice.

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