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CONGRESS.

House of Representatives.

Monday, October 24.

Amendment of the Constitution.

The house resolved itself into a committee of the whole on the report of a select committee on propositions of amendment of the constitution.

Mr. Varnum in the chair.

The report was read as follows:

Mr. Dawson observed that at the time of the adoption of the constitution, that part of it which related to the election of a President and Vice-President had been objected to; and evils, likely to occur, had been foreseen by some gentlemen at that day. Experience had shown that they were not mistaken. Every gentleman in that house knew the situation in which the country had been placed by the controverted election of a chief magistrate; it was one which he trusted never would return. It had been a subject much reflected on by the people, and by the state legislatures, several of which declared their approbation of the principle contained in the resolution reported by the committee. This house had two years since ratified a similar amendment by a constitutional majority of two thirds. At that time no objections were made to the principle of the amendment. All the objection then made was on account of the lateness of the day and thinness of the house. Mr. Dawson considered it unnecessary to make any further remarks at that time, as he could not anticipate any objection that might be urged. He moved that the committee should rise and report the resolution without amendment.

Mr. J. Clay, though in favour of the principle of the amendment, was of opinion that, as to some of its parts, it required alteration. He, therefore moved.

"But if no person have such majority, then the house of representatives shall immediately proceed to choose by ballot from the two persons having the greatest number of votes one of them for President; or if there be 3 or more persons having an equal number of votes, then the house of representatives shall in like manner from the persons having such equality of votes, choose the president; or if there be one person having a greater number of votes not being a majority of the whole number of electors appointed, than any other person and two or more persons who have an equal number of votes one with the other, then the house of representatives shall in like manner, from among such persons having the greater number of votes and such other persons having an equality of votes, choose the President."

Mr. Van Cortlandt thought the amendment liable to objection.

Mr. G. W. Campbell was in favor of the principle contained in the amendment. He considered it to be the duty of that house in introducing an amendment to the constitution on this point to secure to the people the benefits of choosing the President so as to prevent a contravention of their will as expressed by electors chosen by them; resorting to legislative interposition only in extraordinary cases; and when this should be rendered necessary, so guarding the exercise of legislative power, that those only should be capable of legislative election who possessed strong evidence of enjoying the confidence of the people. This was the true spirit and principle of the constitution, whose object was, through the several organs of the government, faithfully to express the public opinion. For this reason he was in favor of the proposed amendment. By it we shall make less innovation on the spirit of the constitution than by rejecting it, and adopting the report of the select committee. There were obvious reasons why the persons from whom a choice may be made, should be fewer in case of a designation of the office, than heretofore. At present the whole number of electoral votes is 176. As the Constitution now stands, four candidates might have an equal number of votes, or three might have a majority, viz. 117 each. According to the proposed amendment, but one can have a majority, and two persons should be equal and highest, it is not probable that the third candidate will have many votes.

Mr. Griswold said it was very difficult to ascertain the precise import of the amendment offered by the gentleman from Pennsylvania, by barely leaving it read from the chair. In the meaning therefore, which he gave it, he might perhaps be mistaken, it involved a principle, and implied a chance, which he never before heard suggested on that floor, or in the part of the country from which he came. It is well known to every member that under the constitution as it at present stands, the votes given for a President in this house are by states, and not according to the majority of the members of the whole body. The amendment, as reported by the select committee, preserves this original feature of the constitution by prescribing that the election shall be proceeded with as pointed out by the constitution. But the present amendment varies this mode, according to which it is to be made without respect to states. Of course a majority of the members are to decide. He submitted it to gentlemen, whether they were willing in this way to sacrifice the interests and rights of the smaller states. If this be the intention of gentlemen, we ought to have time to deliberate on the subject, before it is pressed to a decision. The gentleman from Pennsylvania will explain whether this be his intention.

Mr. J. Clay begged leave explicitly to state, for the satisfaction of the gentleman from Connecticut, that it was not his intention to change that part of the constitution which prescribed that the election should be by states; and if it would induce the gentleman to vote for the resolution he had moved, he would add the words of the constitution, viz.

"But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose, shall consist of a member or members from two thirds of the states, and a majority of two thirds of the states shall be necessary to a choice."

These words were accordingly added.

Mr. Dawson observed that this proposition had been submitted to the select committee, who had considered it more objectionable than that reported. Their object was to innovate as little as possible on the constitution. A great part of it referred to cases so extremely remote that it was not likely to happen. The only material change it made, was to reduce the number of persons from whom a choice should be made from three to two. At present the election for a President and Vice-President was made from the five highest on the list. As, according to the proposed amendment a designation of the persons voted for as President and Vice-President was to be made, it was considered that by giving the three highest numbers to the house of Representatives, from which to choose a President, and the two highest in the Senate, from which to choose a Vice-President, the spirit of the constitution would not be changed. He hoped therefore the report of the committee would be agreed to. He believed it comprehended all cases which were probable; and he further believed that if they spent a month, they would not devise an amendment that would provide for all possible clotes that may happen.

Mr. Clayton gave his reasons at length for favouring the amendment offered by the gentleman from Pennsylvania (Mr. Clay). He had indeed, he said, prepared an amendment to the same effect, but was anticipated by that gentleman. If it were in order, he would offer it as a substitute for that amendment. He then read it in his place.

The Speaker said it was not in order to receive the amendment of the gentleman from Virginia, unless that of the gentleman from Pennsylvania was previously withdrawn.

Mr. Gregg said it was impossible fully to comprehend the two propositions offered barely by hearing them read. Amendments to the constitution were of great importance. He felt at a loss how to act in the present instance, not clearly understanding the resolutions proposed. He wished every gentleman who had formed in his mind an eligible proposition would now bring it forward, that the whole might be printed.

Mr. J. Clay said, as there existed considerable difference of opinion, he should withdraw his motion in order to move that the committee should rise, in order to move a recommitment of the report of the select committee.

Mr. Nicholson said that before the question was taken on the rising of the committee, he would add an amendment to the resolution of the select committee. It was his opinion that the question of principle should be settled in the house; if not so settled, it would be impossible for the report of any select committee to meet the approbation of the house.

It would be remembered that the house were chosen by the people and would in the selection they made express the public will, as well as the electors themselves. The feelings of the one would be in unison with those of the other, and none would be found hardy enough to violate the public sentiment. He therefore moved to strike out from the report of the committee, all that part of it which confined the choice to the three highest, viz: "and if there shall be no such majority, the President shall be chosen from the highest number, not exceeding three, on the list for President, by the house of representatives," and insert, in lieu thereof, the following words: "and if no such person have a majority, then the house of representatives shall immediately choose a President from among those persons who have been voted for as President."

Mr. Dawson said that when the gentleman from Maryland had first moved the appointment of a committee, he had voted against it, and for the very reason now assigned by him. As to the propositions at present offered, they had been previously considered by the select committee; and if referred to that committee, the house ought, in the first instance to decide the principles. As to the amendment offered by the gentleman from Maryland, it was scarcely necessary to make a single remark upon it, as the house was disposed to reduce rather than to extend the number of persons from whom a choice should be made. If adopted, it will give the house of representatives a right to vote for 176 persons, as no candidate might have more than one vote.

Mr. Nicholson believed the proposition of the select committee would reduce them to the same situation, as if the 176 votes were given. Mr. N. said he was not so anxious that his amendment should succeed, as that the principle should be fixed in the house some way or other.

Mr. Goddard said, though he would not pledge himself to vote for the proposed amendment in any shape whatever, yet he was in favour of the amendment offered, by the gentleman from Maryland. He thought with him, that there was no great danger in the latitude allowed the house of representatives. But the principal reason operated with him in favour of the amendment was that it extended the right of suffrage in the house of representatives, and increased the power of the small states. As he conceived, the original proposition went effectually to impair the rights of the small states; but the amendment of the gentleman from Maryland having this effect, as little as possible, he should vote for it.

Mr. Smilie would wish one principle altered in the report of the select committee, viz. that part which confined the election of President to the three highest persons voted for. It was impossible for human wisdom to provide for all cases that occur. Their time was not well spent in providing for cases extremely remote. He had no object in view but the designation of offices. And the more simple the proposition, the more likely they were to obtain this object. His idea therefore was to leave the constitution as it now stood, so far as related to choice being made from the five highest, and only change so far as related to a designation of the office.

Mr. Elliot hoped the amendment of the gentleman from Maryland would not prevail; and coming as he did himself from a small state, he trusted the house would pardon him for assigning his reasons for that hope. He felt confidence in the house of representatives, as well as the gentleman from Connecticut; but he was of opinion that their discretion ought to be limited. The amendment will give the house of representatives the unqualified power of electing from the whole number on the list of persons voted for as President; and on this ground he opposed it.

Mr. Rodney said that in the select committee he had been in favor of the number stated in the constitution. He was not for innovating on the constitution one tittle more than was absolutely necessary. As to the mere

designation of office, the people looked for and expected it; and if that were obtained, they would be satisfied.

Mr. G. W. Campbell said he too represented a small state and was anxious to preserve the rights of the small states; but in a great constitutional question, while these rights were not lost sight of, principle ought also to be regarded.

The proposition of the gentleman from Pennsylvania (Mr. Clay) came nearer to the principle of the constitution than that offered by the gentleman from Maryland. He had already observed that, there being at present no designation, four was the smallest possible number from which a choice could be made; to this number for one was added, making altogether five. In future elections, there will be 176 electors, and if there be a designation of office, but one person can have a majority. To confine the choice to two persons will, therefore, in principle, approach as near as possible to the original principle of the constitution. He was in favour of preserving that part of the constitution which directed the voting by states, wishing as little innovation as possible on the principles of the constitution. He did not, however, conceive a mere change of words dangerous; but the establishment of a principle that deprived the people of the power of electing those who possessed the largest share of their confidence.

Mr. Nicholson's amendment, and lost—Ayes 29—Noes 77.

Mr. Smilie, in order to try the principle, would move to strike out "three," and insert "five."

Mr. Dawson would only repeat a remark, which he had already made. The select committee, in proposing three as the number from which an election should be made, did not consider themselves as departing in the least from the spirit of the constitution; as when both President and Vice-President were voted for, without discrimination, the choice was made from five.

Mr. Smilie said, he did not know that there would be any danger in a proposition; but it was his wish not to alter the constitution except in cases of necessity.

Mr. Goddard said he was in favor of this amendment for the same reason that he had been in favor of that proposed by the gentleman from Maryland.

Mr. Alston was opposed to the amendment offered by the gentleman from Pennsylvania Mr. Smilie, to the amendment of the select committee, because in his opinion it would have a tendency to bring the election of the President of the United States more frequently into the house of representatives, than otherwise it would be brought; he was as much disposed to guard against the influence of the large states as any member on that floor.

The gentleman from Connecticut (Mr. Goddard) was in favor of the amendment because he thought it calculated to lessen the influence of the larger states. For his part, Mr. A. thought very differently from that gentleman; he believed that provided the amendment should be acceded to, it would be an independent to any one of the large states to prevent an election of President by the electors of the several states; that if the votes of a large state should be withheld from any one of the candidates proposed as President, it would prevent such candidate from obtaining a majority of all the votes of the electors. What then, Mr. Alston asked, would be the consequence? The choice would have to be made by that house, which circumstance he never wished to witness again; this he conceived to be an important point to guard against as much as possible.

He was much better pleased with the motion which had been withdrawn. He should therefore give his vote against the present proposition, and should it be rejected, he would support the proposition made by the gentleman from Pennsylvania, should it not be renewed by the gentleman himself.

Mr. Randolph said, because to the house under the impression that another subject would have occupied their attention on account of its primary importance, notwithstanding, however, to separate the importance of an amendment to the constitution. But on a subject which must be discussed in a few days, if at all, it was improper that time should be lost.

Mr. Nicholson moved to amend the second member by adding to the end thereof, "together with a copy of any instrument in possession of the executive, showing that the Spanish government has ordered the Province of Louisiana to be delivered to the commissary or other agent of the French government."

Acceded to—Ayes 64.

The question was then taken on the original motion, amended as follows: "Resolved, that the President of the United States be requested to cause to be laid before this house, a copy of the treaty between the French Republic and Spain of the 1st October 1800, together with a copy of an instrument

The proposed amendment to the constitution was not, he believed so extremely pressing, as to require immediate attention. The subject to which Mr. R. had expected the attention of the house would have been first directed, was the treaty with France. Hoping that the committee would have decided on this amendment at an early hour, he had refrained from any motion. But perceiving that a decision was not likely soon to be made, he would move that the committee should rise for the purpose of taking up the Treaty respecting Louisiana.

Mr. Dawson opposed the rising of the committee.

The question was taken on Mr. Randolph's motion, and carried Ayes 60—Noes 55. Carried.

When the committee rose and Mr. Criswold, after a few preliminary remarks, submitted the following motion:

"Resolved, that the President of the United States be requested to cause to be laid before this house, a copy of the treaty between the French Republic and Spain, of the first of October 1800, together with a copy of the deed of cession from Spain executed in pursuance of the same treaty conveying Louisiana to France, (if any such deed exists;) also copies of such correspondence between the government of the United States, and the government or minister of Spain (if any such correspondence exists) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States—together with copies of such other documents as may be in the department of this government tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France, of the 30th of April, 1803.

Mr. Randolph replied at considerable length, and was followed by Mr. Goddard in favor of, and Messrs. Lyell and Smilie against the motion.

Mr. Gregg asked for a division of the question, considering that it might be of some use to obtain the Treaty of Hellendorf, but not the other papers asked for.

Mr. Sandford, Mr. Elliot and Mr. Nicholson followed in opposition to the motion, and Mr. Thatcher in favor of it.

Mr. Mitchell spoke against it, and moved a postponement of the motion to the first Monday in May.

Messrs. Bradley, Criswold and Goddard, opposed the postponement.

The motion of postponement was lost.

The original motion was divided; and on agreeing to the first member, viz.

"Resolved, That the President of the United States be requested to cause to be laid before this house, a copy of the treaty between the French Republic and Spain, of the 1st of October, 1800.

The house then divided—Ayes 69—Noes 59—The Speaker declaring himself in favor of the affirmative the motion was carried.

The question was then taken on the second member, viz.—"together with the copy of the instrument of cession from Spain, executed in pursuance of the same treaty conveying Louisiana to France (if any such instrument exists.)"

And lost—Ayes 54.

The question was then taken on the third member, viz.—"Also copies of such correspondence between the government of the United States and the government or minister of Spain (if any such correspondence has taken place) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States."

And lost—Ayes 34.

The question was then taken on the last member of the motion, and lost without a division.

Mr. Nicholson moved to amend the second member by adding to the end thereof, "together with a copy of any instrument in possession of the executive, showing that the Spanish government has ordered the Province of Louisiana to be delivered to the commissary or other agent of the French government."

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