

TWENTY-SIXTH CONGRESS, FIRST SESSION.

IN SENATE

MONDAY, December 2, 1839.

At 12 o'clock, the Senate was called to order by the Hon. W. R. King of Ala., president pro tem.

- MAINE: Mr. Williams, Mr. Baggley. NEW HAMPSHIRE: Mr. Hubbard, Mr. Pierce. MASSACHUSETTS: Mr. Davis, NEW YORK: Mr. Wright, (One vacancy). NEW JERSEY: Mr. Wall, Mr. Southard. PENNSYLVANIA: Mr. Buchanan, (One vacancy). DELAWARE: Mr. Clayton, (One vacancy). VIRGINIA: Mr. Roane, (One vacancy). NORTH CAROLINA: Mr. Brown, Mr. Orange. SOUTH CAROLINA: Mr. Calhoun. GEORGIA: Mr. Lumpkin. ALABAMA: Mr. King, Mr. Clay. MISSISSIPPI: Mr. Walker. TENNESSEE: Mr. White. KENTUCKY: Mr. Crittenden, Mr. Clay. OHIO: Mr. Allen. INDIANA: Mr. Smith. ILLINOIS: Mr. Robinson, Mr. Young. MISSOURI: Mr. Linn, Mr. Benton. MICHIGAN: Mr. Norvell, (One vacancy). ARKANSAS: Mr. Fulton.

Mr. Allen presented the credentials of the Hon. Benjamin Tappan, elected by the Legislature of the State of Ohio a Senator from that State, to serve for six years, from the 4th of March last.

Mr. Smith of Indiana, presented the credentials of the Hon. Albert S. White, elected by the Legislature of the State of Indiana a Senator from that State, to serve for six years, from the 4th of March last.

Mr. Crittenden presented the credentials of the Hon. Thaddeus Betts, elected by the Legislature of the State of Connecticut, a Senator from that State, to serve for six years, from the fourth of March last.

The usual oath was then administered by the Clerk to Messrs. Tappan, White, and Betts, whose credentials were read; and to Messrs. Benton, Southard, and Williams, whose credentials were presented at the last session.

On motion of Mr. Walker, Ordered, That the Secretary inform the House of Representatives, that a quorum of the Senate is assembled, and that the Senate is ready to proceed to business.

On motion of Mr. Wright, Resolved, That a Committee be appointed to join such committees as may be appointed on the part of the House of Representatives, to wait on the President of the United States, and inform him that a quorum of the two Houses had assembled, and that Congress is ready to receive any communications he may make; whereupon

Messrs. Wright and Allen were appointed the Committee on the part of the Senate.

On motion of Mr. Knight, the usual order for forming Senators with newspapers, not to exceed the price of three daily papers, was agreed to.

SMALL NOTES IN THE DISTRICT.

Mr. Baynes gave notice that, at the earliest day in which it would be in order to do so, he would ask leave to bring in a bill providing for the summary collection of the notes of the banks in the District of Columbia, under the denomination of twenty dollars.

On motion, The Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, Dec. 2, 1839.

This being the day set apart by the Constitution for the assembling of the two Houses of Congress, at 12 o'clock, Mr. Clark (Mr. Garland) called the House to order, and said:

According to the usual practice, gentlemen, I am prepared, if it is the pleasure of the House, to proceed to call the names of members of Congress, elected to the Twenty-sixth Congress, first session.

The Clerk then called over the names of the following gentlemen, who appeared to be in their seats:

- MAINE: 1 District, Nathan Clifford, Albert Smith. 2 " Benjamin Randall, George Evans, Virgil D. Parry, Hugh J. Anderson, Joshua A. Lowell, Thomas Daves. NEW HAMPSHIRE: Chosen by General Ticket, Tristram Shaw, Ira A. Eastman, Charles G. Atherton, Edmund Burke, Jared W. Williams. CONNECTICUT: 1 District, Joseph Trumbull, William L. Storey. 2 " Thomas W. Williams, Thomas B. Osborne, Truman Smith, John H. Brockway. VERMONT: 1 District, Hiland Hall, William Stale, Horace Everett, John Smith, Isaac Fletcher. MASSACHUSETTS: 1 District, Abiel Lawrence, Leggett Saltwater, Calebushing.

- 4 " William Parmenter, Levi Lincoln, [Vacancy], George N. Briggs, William B. Calhoun, William S. Hastings, Henry Williams, John Reed, John Quincy Adams. RHODE ISLAND: Chosen by General Ticket, Joseph L. Tillinghast, Robert B. Cranston. NEW YORK: 1 District, Thomas B. Jackson, James de la Montayne, Ogden Hoffman, Edward Curtis, Moses H. Grinnell, James Monroe, Governor Kemble, Charles Johnson, Nathaniel Jones, Rufus Pelen, Aaron Vanderpoel, John Ely. 2 " Hiram P. Hunt, Daniel D. Barnard, Anson Brown, David Russell, Augustus C. Hand, John Fine, Peter J. Wagner, Andrew W. Doug, John G. Floyd, David P. Brewster, Thomas C. Crittenden, John H. Prentiss, Judson Allen, John C. Clark, S. B. Leonard, Amasa Dana, Edward Rogers, Nehemiah H. Earl, Christopher Morgan, Theron R. Strong, Francis P. Grainger, Meredith Mallory. 3 " Seth M. Gates, Luther C. Peck, Richard P. Marria, Mallard Fillmore, Charles F. Mitchell. NEW JERSEY: Joseph F. Randolph.

When the Clerk arrived at this part of the roll, he stated that there was conflicting evidence with regard to the election of five members from this State, and asked if it was the pleasure of the House that he should pass over their names until the call of the balance of the roll was completed.

Mr. Maxwell wished to know what this evidence was, or whether the usual evidence was produced on both sides.

The Clerk asked if it was the pleasure of the House that he should make a statement as to the usual course of proceeding?

Several members called for the reading of the evidence. The Clerk then read the commission of Mr. Ayer, signed by Governor Pennington, and stated that there were five other commissions in his possession in the same style.

Mr. Maxwell then called for the reading of the law of New Jersey on this subject.

Mr. Gove Johnson desired that the evidence on the other side be read by the Clerk before the law was read to the House.

Mr. Maxwell stated that his object in having the law read at this stage of the proceeding was to show what could be received as evidence by this body.

Mr. Vanderpoel contended that all the facts should be laid before the House before the law was read. In the present case, there were conflicting returns and conflicting evidence, and it seemed to him that it would be more in order to read the evidence on both sides before the law was read, than to read the law at the present time.

Mr. Fullerton thought the most proper course would be for the Clerk to read the law now, so that the House might be enabled to decide what could be received as evidence in relation to this matter. When this body heard the law read, then it could decide whether the paper on the other side could be read as evidence.

Mr. Johnson wishes to know of the Clerk, whether there were any other returns in his possession from New Jersey, signed by the Governor of that State, than the six which had been referred to? If there were not, why not proceed to call the roll in the usual manner?

The Clerk here asked if it was the pleasure of the House that he should make a statement in relation to this matter.

Mr. Baynes respectfully suggested the propriety of laying this motion on the table for the present, in order that the roll might be called through, to ascertain whether there was a quorum of members present. At present nothing could be done. He, therefore, hoped that the members present would acquiesce in a motion of this kind, in order that the House might immediately proceed with its organization; after which this question could be brought up and acted upon.

Mr. Maxwell contended that they ought not to adopt this suggestion unless some good reason could be given for passing over the State of New Jersey. There had been sent on to the Clerk certificates in the usual form, which have been read; and it seemed to him that it would be an extraordinary course to pass over the State of New Jersey, after these certificates had been produced.

The Clerk then said that there were three propositions brought to the notice of the body—one to read the law, the other to read the testimony in the possession of the Clerk, and the third to pass over the State of New Jersey until it was ascertained whether there was a quorum in attendance in the House.

Mr. Wise said, that before any motion was put to the body, he wished to know what was to be done on the motion to lay this question on the table. Had the names of a quorum been called over? If not, who were entitled to vote on this question? If the question was put before the roll was called over, who was entitled to vote? Would the Clerk answer what was the usual course in a case of this kind? Had he (Mr. W.) a right to vote on this question?

The Clerk said it was not for him to decide as to what course the House ought to pursue in relation to this matter.

Mr. Wise: Has any member a right to move to lay this matter on the table?

The Clerk said that would be a matter for the House to decide.

we cannot predict when it will end,—but to the proceedings.

HOUSE OF REPRESENTATIVES.

TUESDAY, Dec. 3, 1839.

At 12 o'clock, Mr. Hugh A. Garland (Clerk of the former House) called the House to order, and stated that the gentleman from North Carolina [Mr. Bynum] had possession of the floor at the time of the adjournment on yesterday, and, with the permission of that gentleman, he would beg leave to make a respectful appeal to the House.—No man, said Mr. G., feels more than I do the delicacy and difficulty of his position. From the beginning I have felt a high responsibility resting upon me, and before God and my country, I assure you I have had but one motive, and that was to do my duty justly and impartially, without regard to personal or party considerations. I have been placed in a novel and unprecedented situation.—All the cases of contested elections heretofore presented, have been presented to the House of Representatives itself, upon the petitions of the claiming members, and the Clerk had nothing to do with them. The only variation from that rule was in the case of Messrs. Moore and Leitcher, of Kentucky. Both these gentlemen presented themselves before the House, and claimed the right to have seats, and the House was compelled to take the matter into consideration; and the House might perhaps, have remained unmorged for a fortnight, if these two gentlemen had not voluntarily withdrawn their case until after the organization. The present case however, was one entirely different from the one referred to. The difficulty in the present case was presented to the Clerk himself. Conducting evidence was brought into his office, and what was he to do?—What was I to do in this case?—Was I to take upon myself the powers of the House of Representatives—the powers which the Constitution has given to it to decide on the qualifications of its members? I assure gentlemen that I have felt the delicacy of my situation, and I have labored assiduously to be enabled to come to correct conclusions in relation to this question. I therefore, now respectfully appeal to this body, to permit me to make a statement which I have prepared in justification of my course on the present occasion; and I think the request is not unprecedented, when the conduct of a public officer has been brought in question, as mine has been on the present occasion.

Mr. Jenifer asked if the Clerk designed to review his decision of yesterday, and call the members from New Jersey, so that the House might go on without his interference.

The Clerk stated that he had taken the course on yesterday, which he felt it to be his duty to take, and he could not depart from it until he was satisfied that his course was then wrong.—All he now asked, was, to make a respectful appeal to the House, and lay before gentlemen the grounds and motives which induced him to take the course he had.

Mr. Wise thought it due to the Clerk—in the situation which he was in, and usage in this case be regarded as law, had placed him—to be permitted to make a statement. He was very desirous to hear a statement, and doubtless other gentlemen were desirous to hear a statement, of the reasons why the Clerk had not discharged the duty which law and usage had imposed upon him. He hoped, therefore, that all gentlemen would acquiesce in hearing this statement, and perhaps they would not be so desirous to see the Clerk impeached, as they certainly would be if the gentleman sought to agree to hear any evidence on the subject which the Clerk might have to present. Some called for the reading of the law on yesterday, some for the reading of the certificates; and some desired that the names of the five members from New Jersey might be called; and as he made no statement on yesterday why the names were not placed on the roll, and called, he thought this statement ought now to be heard by universal consent.

When Mr. W. resumed his seat, there were cries to the Clerk to "Go on."

Mr. White of Kentucky said, for one he entered his solemn protest against the reading of this prepared document by the Clerk. He asked if the Representatives of the people were to have their business interrupted by their Clerk, and to sit there to hear a prepared statement read from the Clerk's desk, calculated, if not drawn up, for the purpose of making a false impression in the country; and he thought, when his friend from Virginia (Mr. Wise) agreed to hear this statement read, he had not reflected sufficiently on the subject. In his view, it was no matter who rose and objected here—it was no matter what the newspapers of the country had published—it was no matter what affidavits the leaders of New Jersey had sent in to arrest the laws of New Jersey. It was the duty of the Clerk to take the evidence produced, in conformity to the laws of New Jersey, and it was not his duty to rise and make statements here in relation to the matter. Suppose the Clerk did go on and make this statement, would we go on and discuss this matter easily where we left off? No, sir. The moment that he was done, new points would be raised, and we would be involved in greater difficulties than we are at present. We would have difficulty enough in deciding the matter, if we went on discussing this matter now without permitting new points to be raised by the Clerk; and be protested against bearing any statement from him.

Mr. Wise was sorry to be thrust into a debate with his own friends; but he thought if the gentleman from Kentucky would listen to what he had to say, he could convince him that it was proper, legal, formal, and orderly, that the Clerk should make this statement. It was true that the Clerk was not technically an officer of the House; but by the law of usage and necessity, he was always permitted to hold the place which he now held. He was the quondam Clerk of the last Congress, and presented himself here first to render to his successor in office the records of the House; secondly, the Clerk was here by the law of usage, and the ordinances of 1785, imposed the duty upon the Clerk of the last Congress to keep a roll of members of Congress and to call over that roll at their meeting.

Mr. W. here read the ordinance of 1785; and also a resolution of 1791, in which the Clerk was sworn to perform this duty. He contended that by this resolution, if the Clerk was sworn to perform this duty, and that, if he did not perform it, he would be disregarding his duty. He was under a moral obligation to perform it; but the members of the House were not under the moral obligation, inasmuch as no oath had been yet administered to them. The Clerk was bound by an oath to perform his duty, but the members of the House were not under this sacred obligation. The Clerk was bound by his oath to discharge his duty, but the members of the House were permitted to be partisan. They were presumed to come from the heated mass of political fermentation. We come here (said Mr. W.) with all our passions feeling—the blind and devoted slaves of party—but the Clerk was presumed to be above this pole-

mic ambition. The Clerk was bound by his oath to be free from partial influences, and by the resolution referred to, to be in office until he was succeeded by his successor. Mr. W. read the ordinance of 1785 concerning the duties of the Secretary of Congress; and said if he had been on the roll in terms with the Clerk, he would have gone to his room and appealed to him, as an officer by usage, if not law, as a Virginia gentleman, bound by a solemn oath to perform a certain duty, and as a Christian, who needs no oath to bind him to discharge the duty which this resolution and the law of usage imposed upon him. The Clerk had attended to the House on yesterday that he was not a judge, and verily he (Mr. W.) agreed that he was not a judge, and according to his view of the Constitution, no man here was a judge of his *prima facie* right to a seat on that floor. Neither the Clerk, nor any other man now present, could judge of his credentials. Under the Constitution he considered that at the present stage of proceedings, they were in transitu between the House of Representatives and their constituents, and no one had the right to decide upon his credentials.

Mr. W. then read the clause from the Constitution which gave to the States the power at present to regulate elections, cited the mode by which the Representatives from Virginia obtained their certificates of election, and contended that when that certificate was obtained, as it was there, from the sheriff of their district, there was no power to prevent them from taking their seats in this House in the first instance. When a gentleman here presented the evidence that he was entitled to his seat, it was not the duty of the Clerk to decide judicially upon it. He was not a judicial officer, but a mere ministerial officer. His duty was merely to receive the evidence presented to him, and enter it. Had the Clerk the evidence in this case? If so, why did he not enter the names of the five New Jersey members upon the roll. The Clerk had said that he is not the person to decide the question who are entitled to seats, and has referred the matter to us; but we have no more right to decide it at present than he has; and the question will necessarily come back to the Clerk at last to be decided; and this was the view which he desired to press upon the Clerk and make him, as a man situated above party, as a sworn officer, and as a Christian, do that directly, which he would be forced to do indirectly. The Clerk has said he was not to take upon himself to decide on this question, but before it to the House, as if we were a convention of ministers, who had the power to decide on each other's credentials, but when you put the question as to whether the credentials of the five gentlemen from New Jersey shall be received, who shall vote upon it, Mr. Averig and his political friends, or Mr. Dickerson and his political friends? In refusing to decide on this question, the Clerk does decide. The failure to enter the names of the five New Jersey members from New Jersey has all the effect of a judgment—the potential effect of a judgment.—It will be impossible for the House to decide upon this question, and it will devolve upon the Clerk or some one out of it to decide. We come back then, to you, Mr. Clerk, and you may as well exercise that judgment at once, which you will be compelled to do at last. He contended that the evidence in this case was the certificate of the Governor of New Jersey, and that must be conclusive in the first instance, because the moment gentlemen attempted to go behind that, as some gentlemen had suggested on this floor, they converted this massive, unwieldy body into a Committee of elections, and it would be to go back to the people of New Jersey and be called about from one district to another, to examine into the frauds which were generally committed on both sides at elections, which would lead them into interminable difficulties. The Clerk has said that he could not decide upon these certificates, but, at the same time, he has decided upon them. He has decided that Mr. Randolph has a certificate in the proper form, and has put his name upon the roll. Well if his certificate is properly presented to him, and in a proper form, are not the certificates of the other five New Jersey members in proper form? They are precisely in the same form of Mr. Randolph's. If his is good, theirs are good, and if his is bad, theirs are bad. If the Clerk has not violated his duty in placing Mr. Randolph's name upon the roll, it cannot be a violation of his duty to place the names of Mr. Averig and his colleagues on the roll. The certificate of the Governor in their case was *prima facie* evidence of their right to a seat, and neither the Clerk nor the House, at the present time, had the right to deprive them of taking their seats. Suppose (said Mr. W.) objection should be made to my taking my seat, because some one should pretend that he had a right to it; would I permit the Clerk to prevent me from participating in the organization of the House in such a case? Has the Clerk any right or power under the Constitution and the laws, to prevent any body from exercising his right here, when he has the evidence that he has a right to his seat in his possession. No; the Clerk had no right to prevent him from taking his seat when he had his certificate in his pocket; and although he did not desire to preach revolutionary doctrines, he would not be put to the test for all that the world could give him. Neither you, Mr. Clerk, nor any one else here, had the right or the power, to judge on the matter which the seven sheriffs of my district alone have the right to decide.

Mr. W. considered that the most proper mode of organization would be, for the Clerk to call over the States, and then each member could rise and present his credentials; and when they presented their credentials in the proper form, they were entitled to their seats, and there was no power to prevent them from taking their seats, and holding them until the House, after it was properly organized, investigated the case. He considered the duty of the Clerk to be a plain and simple duty, and he again appealed to him as a sworn officer, to say whether it was not his duty to enter upon the roll the names of the gentlemen who had the certificate of the Governor of New Jersey under the broad seal of the State, whatever might be his convictions as to what ought to have been done by the Governor; and if the Clerk had to decide this question at last, indirectly, was it not better that he should decide it at once?

In conclusion, he said that he desired to hear what the Clerk had to say and hoped he would be permitted to make the statement he had prepared, because he wished the Clerk to tell him, as a sworn officer, as a native born gentleman of his own mother State, and as a Christian, ready to answer before God and his country, why he had not discharged his duty in the present case.

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In conclusion, he said that he desired to hear what the Clerk had to say and hoped he would be permitted to make the statement he had prepared, because he wished the Clerk to tell him, as a sworn officer, as a native born gentleman of his own mother State, and as a Christian, ready to answer before God and his country, why he had not discharged his duty in the present case.

Mr. W. then read the clause from the Constitution which gave to the States the power at present to regulate elections, cited the mode by which the Representatives from Virginia obtained their certificates of election, and contended that when that certificate was obtained, as it was there, from the sheriff of their district, there was no power to prevent them from taking their seats in this House in the first instance. When a gentleman here presented the evidence that he was entitled to his seat, it was not the duty of the Clerk to decide judicially upon it. He was not a judicial officer, but a mere ministerial officer. His duty was merely to receive the evidence presented to him, and enter it. Had the Clerk the evidence in this case? If so, why did he not enter the names of the five New Jersey members upon the roll. The Clerk had said that he is not the person to decide the question who are entitled to seats, and has referred the matter to us; but we have no more right to decide it at present than he has; and the question will necessarily come back to the Clerk at last to be decided; and this was the view which he desired to press upon the Clerk and make him, as a man situated above party, as a sworn officer, and as a Christian, do that directly, which he would be forced to do indirectly. The Clerk has said he was not to take upon himself to decide on this question, but before it to the House, as if we were a convention of ministers, who had the power to decide on each other's credentials, but when you put the question as to whether the credentials of the five gentlemen from New Jersey shall be received, who shall vote upon it, Mr. Averig and his political friends, or Mr. Dickerson and his political friends? In refusing to decide on this question, the Clerk does decide. The failure to enter the names of the five New Jersey members from New Jersey has all the effect of a judgment—the potential effect of a judgment.—It will be impossible for the House to decide upon this question, and it will devolve upon the Clerk or some one out of it to decide. We come back then, to you, Mr. Clerk, and you may as well exercise that judgment at once, which you will be compelled to do at last. He contended that the evidence in this case was the certificate of the Governor of New Jersey, and that must be conclusive in the first instance, because the moment gentlemen attempted to go behind that, as some gentlemen had suggested on this floor, they converted this massive, unwieldy body into a Committee of elections, and it would be to go back to the people of New Jersey and be called about from one district to another, to examine into the frauds which were generally committed on both sides at elections, which would lead them into interminable difficulties. The Clerk has said that he could not decide upon these certificates, but, at the same time, he has decided upon them. He has decided that Mr. Randolph has a certificate in the proper form, and has put his name upon the roll. Well if his certificate is properly presented to him, and in a proper form, are not the certificates of the other five New Jersey members in proper form? They are precisely in the same form of Mr. Randolph's. If his is good, theirs are good, and if his is bad, theirs are bad. If the Clerk has not violated his duty in placing Mr. Randolph's name upon the roll, it cannot be a violation of his duty to place the names of Mr. Averig and his colleagues on the roll. The certificate of the Governor in their case was *prima facie* evidence of their right to a seat, and neither the Clerk nor the House, at the present time, had the right to deprive them of taking their seats. Suppose (said Mr. W.) objection should be made to my taking my seat, because some one should pretend that he had a right to it; would I permit the Clerk to prevent me from participating in the organization of the House in such a case? Has the Clerk any right or power under the Constitution and the laws, to prevent any body from exercising his right here, when he has the evidence that he has a right to his seat in his possession. No; the Clerk had no right to prevent him from taking his seat when he had his certificate in his pocket; and although he did not desire to preach revolutionary doctrines, he would not be put to the test for all that the world could give him. Neither you, Mr. Clerk, nor any one else here, had the right or the power, to judge on the matter which the seven sheriffs of my district alone have the right to decide.

Mr. W. considered that the most proper mode of organization would be, for the Clerk to call over the States, and then each member could rise and present his credentials; and when they presented their credentials in the proper form, they were entitled to their seats, and there was no power to prevent them from taking their seats, and holding them until the House, after it was properly organized, investigated the case. He considered the duty of the Clerk to be a plain and simple duty, and he again appealed to him as a sworn officer, to say whether it was not his duty to enter upon the roll the names of the gentlemen who had the certificate of the Governor of New Jersey under the broad seal of the State, whatever might be his convictions as to what ought to have been done by the Governor; and if the Clerk had to decide this question at last, indirectly, was it not better that he should decide it at once?

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