LEGISLATIVE DEBATES.

IN SENATE.—THURSDAY, Dec. 7.

The following resolution offered by Mr. Gilmer, on yesterday, being under consideration, viz:

Resolved by the Senate, That in the case of the contested election pending before this body, between Messrs. Waddell and Berry, depositions may hereafter be taken, on three days notice, before any Justice of the Peace in Orange County.

Resolved, further, That all depositions hereafter taken before a Justice of the Peace in said County, with ten days notice given under the Resolutions first adopted in the case, shall be read, if in other respects competent.

Mr. Bower had commenced a speech, in which he was interrupted, and called to order.

The Chair decided that a review of the facts, circumstances, and incidents in regard to the controversy, was out of order.

Mr. Bower remarked that the scope of his remarks was to show, in a few words, what effect the resolutions were calculated to have upon the rights of the sitting member, and he had no desire to violate the Rules of order. He merely observed that these resolutions were intended to affect the sitting Member. We were told yesterday, that the former resolutions did not effect the object had in view in their passage. He would not make any charge—but suppose no depositions have yet been taken, what will be the result? To-morrow the sitting member may receive notice that the contesting party will proceed in three days to take depositions, of the nature of which he is ignorant. And before he can make arrangements to be present, either in person, or by attorney, to attend to it, the evidence may be taken; and, until he knows what it is, he will have no opportunity to seek for other testimony to rebut what may be offered.

Mr. Thomas, of Davidson, deemed it his duty to trouble the Senate with a few remarks. He desired to be brief, and, according to his understanding, the matter could be explained in a very few words. What is the case before the Senate? He held it to be a question in regard to the time to be given within which evidence may be taken. Now what is the history of the facts? Did not the gentleman from Guilford at first propose that evidence should be taken on *five* days' notice, and was not the time extended, at the request of the friends of the sitting member, from five to ten? And is it here to be argued, that in a case of time for notice to be given by either party, it is only to concern Mr Waddell? He thought not. It was clear to him, as the notice originally proposed was only five days, and as the friends of the sitting member desired ten, it was surely not for the benefit of Mr. Waddell. Now is this to be an ex parte proceeding? Surely not. In this Court and Senate this matter must be settled upon its merits. There is or should be, none here who would let his private feelings enter into this subject. The eyes of the Country, all ears, are open to this proceeding; and if we should urge our feelings on this subject, the individual or party who should dare to do so, would be worsted. He held that the time granted by the first resolution was unnecessary, but it was not asked for by the Senator from Guilford—it was increased to ten days by the suggestion of the other side. But each have had the benefit of it. Can the sitting member do nothing? The ten days was given for the benefit of each, and it was his duty to get the evidence. If he has failed to do so, who is responsible? By a continuance of such a system, when can the contestant get a hearing? At the coming session there might be a probability of it—but certainly not during the present Legislature. Mr. T. said it seemed to him the whole matter ought to be speedily settled. The first ten days had been given to each party; and now ought not the time to be reduced? A proper time, and reasonable time, is all that can be asked.

Mr. Smith said, the Senator from Ashe and others who oppose the resolutions under consideration, from their remarks, appear to me entirely to misconceive the purpose of the rule which requires a reasonable previous notice to be given of the time and place appointed for taking depositions.

The object is not, as they seem to suppose, to secure a benefit to the party taking the depositions,—but to the party against whom they are to be used. It is to give the latter a fair opportunity to be present, in peron or by agent, and to subject the witness to the cross examination necessary in the investigation of truth.

The resolutions offered by the Senator from Guilford, as I understand them, involve no unfair advantage to either of the parties to this controverey. They allow depositions to be taken on shorter notice than is required under the resolutions heretofore adopted by the Senate; they provide merely that evidence *may be* hereafter taken by either party at three days notice; they confine neither to those reduced limits, nor prescribe that as the time within which the depositions must be taken. On the contrary, either may extend it to enable him to make all the preparations he may find needful. But as a precaution against surprise, the resolutions declare that the party against whom the evidence is to be taken shall have *not less* than three days previous notice of the time and place.

The reduction of the time, therefore, from ten to three days, as now proposed, can be only prejudicial, if to any one, to the contestant himself. The sitting member has already had the benefit of the longer notice, and will be permitted to proceed with his own evidence on giving the shorter notice to his opponent, a result, at least, not open to complaint by him.

The Senator from Ashe is also mistaken, if he supposes, that thirty days notice is prescribed by the provisions of the existing law, before taking depositions in contested Elections. The law requires, in regard to Elections, held at the *usual time* for members of the General Assembly, that the person intending to dispute the right of one, who has the certificate of Election, to his seat, shall give him thirty days notice of *that intention* previous to the meeting of the Assembly. But the very same section (Rev. St. Ch. 52, Sec. 32) expressly directs the notice in taking depositions to be given, that is required in taking depositions at law. And what is the notice required in action at law? By reference to the 70th section of 31st Chapter of the Rev. Statues, it will be seen, that the notice required is for three days, where the party notified does not reside more than ten miles from the place of taking the depositions,—with an additional day for every additional ten miles distance.

This is the rule which has been found convenient and proper (in the absence of any special order,) in judicial proceeding, and it is also adopted in ordinary contested Elections, which are analogous to them.

Why should the time be enlarged in the case of the present Special Election, as it has been under the resolution heretofore passed? What considerations are there, public or personal, to induce us to deviate in *that direction*, from a rule, just and fair in itself, and which prevails, under Legislative sanction where the public interest and the parties concerned are neither liable to be prejudiced by delay?

But there are reasons, strong reasons as they seem to me, why we should restrict rather than extend the time of notice, if it can be done in this case, without injury to the parties. Each day that the decision of their case in unnecessarily deferred may prove but the repetition of an act of injustice to the senatorial constituency of the district;—an injustice, should it be hereafter ascertained, we shall be unable to repair. Suppose it should turn out, after inquiring, that a majority of the legal votes have been given to the contestant, what wrong shall we not have done, by postponing the decision, not merely to the people of the County of Orange, but to the whole people of the State of North Carolina? Especially so, Sir, if in the meantime we shall have disposed of a large share of the business of the session, and made the important Elections, devolving upon this Legislature, by the vote of one who is not entitled to his seat? It may be, that in these matters, there is not merely a failure to reflect the popular sentiment of Orange, but an entire misrepresentation of it. The possibility that this wrong may be done by our action, demands of us the earliest practicable settlement of this contest. It is alike due to the people of Orange—to the entire State—to ourselves, that no unnecessary delay be allowed.

It is not my purpose, in any wise, to judge the merits of this case, in supporting the resolutions before the Senate. I know nothing of the facts, nor of the principle which they may involve. Whenever the case comes properly before us, I trust we shall all be prepared to give it a dispassionate consideration and to decide it without reference to political effects.

It is however our duty to urge it to an early settlement, that we may be sure we have upon this floor that individual, whoever he may be, whom a majority of the qualified voters have elected.

Ten days have already elapsed. The sitting member has had notice, for that space, of the time when his opponent's evidence would be taken,—a space sufficient to enable him to make some progress, at least, in preparing his own case. It certainly is not the fault of this body, if that time has been wholy misimproved. The session is rapidly passing away. No injury can, I think, result to either of the parties by reducing the notice as proposed by the Senator from Guilford, while it is calculated greatly to facilitate and hasten the settlement of the controversy. We should not therefore, by any action of ours, postpone, without cause, the decision of a question, delay in settling which may defeat the will of the people in a matter in which they have so deep an interest. I hope therefore the resolutions may pass.

Mr. Berry said if these resolutions were adopted, they were calculated to inflict on him great injustice. Why did he say so? Because Mr. Waddell had already had a month to collect testimony. A month had elapsed since the election, and Mr. Waddell has known all that time of his purpose to contest his seat. This purpose he had concealed—and he (Mr. B.) had to wait until his purpose was made known to him—and he was not aware, until the day he set off here, of any purpose to contest his seat; and he then applied to the sheriff, if his seat was to be contested, to make out a list of the poll books, to see where he must apply for his testimony; but no list ever came until yesterday; it was handed him, while these proceedings were going on. Now Mr. Waddell had been engaged an entire month in collecting his evidence,—while under the first resolution, as he understood it, either party was only allowed ten days notice. He had no wish to gain time except that the case should be fairly investigated and time extended to collect the evidence. He had no wish to delay the progress of the case; all he wanted was justice. And what sort of notice had he received? The notice had set forth no names—it set forth that the deposition of the sheriff and others would be taken.—Until he knew what the testimony was, how was he to prepare evidence to rebut it? He had been advised that it was not important to hunt evidence, but had empowered an agent to go to day to attend to the taking of depositions. He had no disposition to prolong this contest—he was anxious to go immediately into the investigation, and he had no fears, if the case were decided upon its merits. It was alleged here yesterday, that one of the Commissioners had refused to act; of this he had no intelligence, and no proof had been offered. It was true, a suggestion had been made that the commissioners be named because they were more accustomed to such business—and he had no information that one of them had declined; though it was probably so, and another must be appointed in his place. If this resolution passed, gross injustice would be done him. All he asked was a fair investigation.

Mr. Gilmer said, before the question was taken, he wished to raise a question of order, under the instruction of the Speaker, whether Mr. Berry had a right to vote? And he would give notice, if the Speaker decided against him, that at a proper time he would raise the question of order. If it was the pleasure of the Speaker he would now proceed to explain his views.

The Chair ordered the roll to be called, with the approbation of the Senate. The Speaker remarked that the chair could not know, certainly, whether the member will offer to vote or not. We understood the Hon. Speaker as reserving the point for future decision.

Mr. Thompson, of Wake, said it was his purpose to vote against the resolutions; and he would assign, in a few words, his reasons He was confident that no one on that floor had a stronger wish that a fair, candid, and thorough investigation of this case should be made, than himself. Nor was any person more disposed to go into the business and despatch it, than himself. It had been urged, that if we do not go speedily into this case, gross injustice would be done to Mr. Waddell, if it shall be found that he is entitled to the seat instead of Mr. Berry—and this gross injustice was argued here as a reason why we should proceed with despatch. To meet this argument, he would say, if Mr. Berry is pushed rapidly into this investigation, without a fair opportunity to procure evidence,—without a fair opportunity to seek for witnesses, he would ask, would not gross injustice be done to Mr. Berry, and Orange county? By the former resolution ten day's notice was not too much. Well, he would ask gentlemen, in all candor, how it was presumed, after Mr. Waddell's depositions were taken, the sitting member would have an opportunity to get his rebutting testimony? That he must canvass the county of Orange, 40 miles square, and hunt evidence in three days, to have justice done him, seems unreasonable. As such, it appeared to him (Mr. T.) reasonable and right that he should have at least ten days in order to have an opportunity to hunt his evidence. Mr. T. hoped the Senate would be disposed to do ample justice to both parties engaged in this controversy. It was now objected that the Senator from Orange should vote upon this resolution. Why was it not made a few days ago? The Senator had voted then—and who objected? No one. Why were the gentlemen silent who now object? If right then, it was right that he should vote now—and the objection seemed to him entirely out of place now.

Mr. Lillington said: The Senator from Orange had made the remark, that the resolution offered by his friend from Guilford, was calculated to do him injustice, and he had more than intimated that such was the purpose of the mover.

Mr. Berry did not intend to impute any such purpose. He said, if the resolutions were passed, they were calculated to do him gross injustice.

The Speaker remarked, that he did not understand the gentleman from Orange as imputing any such motives, or he would have called him to order.

Mr. Lillington proceeded. If injustice is aimed at whether as designed, or as a necessary consequence of the passage of these resolutions, he would ask, if the gentleman had not been treated with great indulgence on yesterday, when, clearly out of order, he had addressed the Senate on the merits of the case. He was permitted without interruption, to assert that he had been sent here by a majority of the legal voters of his county; and to express his very great surprise, that his seat should be contested. One election, he had said, was discovered to be invalid, because of certain mistakes in the returns, and the certificate in consequence given to the wrong man—putting it in the power of the contestant to keep him out. Another election was then held, and he had *again* received a majority of the legal votes. All this was wholly irrelevant, and in the estimation of Mr. L. highly improper. There was no design on the part of Mr. L. or his friends, to do the Senator injustice, but there *was* a doubt whether he had a right to be heard at all in a question concerning his seat in that chamber. He cannot sit here as a judge in his own cause—nor can he be heard as an advocate until the issue is made up. What, sir, is this great injustice? Why, simply this, that after adopting a resolution requiring the contestant to give the sitting member ten days notice of the time and place of taking depositions, we now propose, in order to expedite the investigation, to allow the sitting member to proceed with his testimony, upon giving the contestant only three day's notice; and this is termed *injustice!*—Sir, if any injustice is done, it is to the contestant. The sitting member has the right under the resolution, to select his own time for giving the notice, and then call on the contestant to meet him in three days; and I cannot conceive why opposition to this resolution, should come from that quarter, except for the purpose of *delay*. Sir, if the Senator is so very confident that he has been returned by a majority of the legal voters of the county of Orange, why does he not, instead of endeavoring to throw obstacles in the way of this investigation, meet it boldly and promptly? We now tender him this resolution.—That the matter may be expedited, we propose at the risk of doing injustice to the contestant, to reduce the time of notice to three days. If either party should desire an extension of the time, upon proper cause shown to the Senate, by affidavit, Mr. L. had no doubt but the extension would be cheerfully granted.

Mr. L. concluded by appealing to Senators to discard all personal considerations—to act as became the Representatives of a free people—to enter upon this investigation with the determination to do *justice* between the parties, regardless of the advancement of the interest of this or that political party.—And if it should turn out upon a fair and impartial investigation of the case, that the sitting member is entitled to his seat, Mr. L. would be the last to disturb him in the exercise of rights, guaranteed by the constitution, and delegated to him by a majority of his people.

Mr. Walker agreed with the Senator from Rowan, that we should go into this investigation with coolness and deliberation, for which purpose, ample time should be extended to both parties. This time had been accorded to the contestant; and at this late period, when Mr. Waddell has prepared his testimony, it is now asked that the time shall be reduced, and it has become extremely important to bring the case to a close. What notice had been served on the Senator from Orange? He received notice that Waddell would proceed to take the testimony of the Sheriff and others, and when he wants time to hunt up his own evidence, then comes this resolution to reduce the time. How was the sitting member to meet the case, until he knew what the case was? He had to wait, until he could see the testimony made by Mr. Waddell,—and we are now asked to shorten the time of notice from ten days to three. Suppose the sitting member should take 7 or 10 days to hunt up his testimony—would not Mr. Waddell's friends attempt to press a trial? If it took so much time for the contestant, could the sitting member be expected to give notice and procure his evidence in three days time? What course had Mr. Waddell pursued? When in August last he knew that Mr. Berry would contest his seat—he falls back upon the people—a new election ordered ——(The chair called Mr. W. to order.) He would appeal to gentlemen, in all candor, would they force the sitting member to the necessity, of procuring his evidence in so short a time, since Mr. Waddell and his friends had had full time. He noticed a meeting had been held, and a committee of 12 appointed to collect testimony. (Here the Chair again called Mr. W. to order.) He was very sorry to transgress the rules—but we could not even begin the case, and ought to wait till the proper time. He hoped gentlemen would be willing to extend the same time to Mr. Berry that they had to Mr. Waddell. He begged them to be generous—just give ten days notice, and he was satisfied so far as the rest was concerned. The sitting member has the right to represent the people of Orange—if he is denied the right the people of Orange will have no voice here. It is important that the voice of every County in the State should be heard, and that none should be stifled. If we denied the right of Orange, her voice would have no weight in the Legislature.

Mr. Lillington said:

The gentleman from Mecklenburg says that there is now exhibited a disposition among the friends of the contestant, to press this investigation with great haste, although they were not originally so disposed; and he seems to think that we ought to be willing to give at least ten days notice. Whatever admiration Mr. L. might have for the reasoning powers of the gentleman from Mecklenburg, he confessed he had but little confidence in the accuracy of his recollection. The original proposition of the gentleman from Guilford was that the sitting member should have *five* days notice—but at the special request of his friends, the time was extended to ten days. If it was a great hardship then, to have to hear testimony on five days notice, he considered that it was as as great a hardship to hear testimony on *three*. The time was extended to ten days as a favor to the sitting member. What sort of reasoning is this? The remarks of the gentleman satisfied Mr. L. that his reasoning was no better than his recollection. Why these resolutions should work a hardship on the sitting member, he could not conceive.

The sitting member we are informed, has had advice on his case, and has thought proper not to proceed with his testimony. Surely for this we were not to blame. When we propose to expedite this matter, by giving only three days notice, the rule is reversed—and what at first was a great favor, becomes all at once a great hardship. The effect of the opposition to these resolutions is to produce delay. There is no good reason why, after the sitting member has had ample time allowed him to prepare his case, the contestant should not have the right to reduce the notice to three days—especially when the sitting member is not compelled to give the notice at any particular time.

The gentleman from Mecklenburg, had utterly failed to satisfy him that any injustice would be inflicted upon the sitting member. It is complete mockery, if after allowing him ten days, we suffer him to lie on his oars, talk out of the record, descant upon irrevalent matters, holding back from the investigation—literally doing nothing but evade the issue. If we suffer him to get up these discussions and postpone action, indefinitely—what becomes of the law in relation to contested elections? It might as well be expunged from the Statute book.

Before a decision can be had, all the important measures of legislation will have been acted on, and the people of Orange, if misrepresented, might as well lie down under the grievance. Sir, if justice is to be done, to be effective, it must be done speedily.

Mr. Walker was much obliged to the gentleman from Rowan for his sympathy. But he recollected very well how the ten days were granted. He acknowledged it was proposed by the friends of Mr. Berry, and chearfully accepted, as a benefit conferred on both sides—but now when Mr. Waddell has enjoyed the benefit, and it is about to accrue to a sitting member, we are asked to abridge the notice down to three days. His recollection was about as correct as the gentleman's. If the contestant and his friends have enjoyed the benefit of ten days, he appealed to their magnanimity to extend ten days to the sitting member—to their generosity to grant them but this, and they would be content.

Mr. Shepard rose to make a suggestion. He did not wish to do the sitting member any injustice.—He was perfectly willing that he should have opportunity to make out his case; and he therefore suggested to his friend from Guilford, some such resolution as to compel the committee to report on a certain day, say the 12th of this month, or the 12th of January. He merely threw the suggestion—his friends could make what use of it they deemed proper.

Mr. Gilmer would readily vote for a resolution fixing a time. His resolution only proposed to accelerate the proceedings—so that the case may come to a trial within reasonable time.

The Chair suggested, to avoid confusion, that the gentleman from Guilford should make his point of order now. If he desired it, the Chair would hear his argument.

Mr. Gilmer said he desired to be brief; as he was anxious that this matter should be disposed of to-day. He considered the right to hold a seat on this floor, as an office, and more than an office, because a member can hold no other office of trust or profit in North Carolina. It is a franchise—a privilege personal to him who holds it, to which emoluments are attached, and the privilege of freedom from arrest. No member had the privilege of voting on a question in which he had a direct personal interest It is true there is nothing in our Rules to forbid it—which are few in number—our Rules of Order would not exclude such a vote. But we are not governed only by our Rules of Order. A variety of questions arise here, upon which the Speaker must decide, and concerning which he finds nothing in our rules of order to guide his decision. Suppose a motion is made to divide a proposition, and the question arises whether it is susceptible of division, the Speaker does not decide it by the authority of our rules. So in case A ofiers one amendment, B an amendment to the amendment, and C a third amendment. The Chair decides C out of order—and if called on for his authority, he must resort to immemorial custom, and parliamentary law and usage.—Suppose a resolution should be before the House, which makes a direct appropriation of money to a Senator, and a question of order arises. The Chair decides that it is not right that he should vote in his own case. Where does he get his authority? Suppose a call of the House is ordered; a member rises and declares there is no authority for the call.—The Speaker would decide that there was; but he would not find it in the ordinary rules. So in various other cases. A member speaks of what is said by members of the other House. The Speaker decides that he is out of order, under immemorial parliamentary law. Suppose in debate, we address a member by name, instead of the member from such a county—it is a violation of parliamentary law, calculated to excite irritation, disturbance, and produce confusion. Those few rules we are in the habit of adopting, for our government, called rules of order, do not abrogate the ancient parliamentary law; and the Chair is bound by the law—if not, nothing in our rules of order would apply to a variety of cases which may occur.

Mr. Gilmer then read from Jefferson's Manual, under the head, "Order and Debate:"

"No member may be present when a bill or any business concerning himself is debating; nor is any member to speak to the merits of it till he withdraws." 2 Hats. 219.

"The rule is, that if a charge against a member arise out of a report of a committee, or examination of witnesses in the house, as the member knows from that to what points he is to direct his exculpation, he may be heard to those points, before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order, or matter arising in the debate, then the charge must be stated; that is, the question must be moved, himself heard, and then to withdraw." 2 Hats. 121, 122.

"When the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed even after a decision. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the house, that this rule, of *immemorial observance*, should be strictly observed."—2 Hats. 119, 121. 6 Gray. 368.

These are all the doctrines he found in Jefferson's Manual upon this point; and if this is authority governing the action of this House, it is clear that the sitting member could not vote upon this question. The Senate would surely be badly governed, if there were no other rules to govern its action than our ordinary rules of order. For suppose that a man should come here inflamed or enraged, and insult the Speaker, or assault him in his Chair. On the question of his arrest, who could insist that he would have a right to vote on that question, or any issue growing out of it? would any Senator on this floor rise and insist that he should be allowed to vote, because he was the Representative of a free people?—Or that the people would be without a Representative if his vote were lost? It would be contrary to all our notions of jurisprudence, and the principles regulating fair and impartial trials.

A decision made here, that a member can vote on a question directly affecting himself, and by which he might hold his seat, by means of his own vote, would present for consideration to the public mind, that which would not readily subside. These, however, are my views, and whether right or wrong, they are submitted with due deference to the better judgment of the Speaker.

Mr. Walker said, if he understood the case, where a Committee reported against a member, and the member was put upon his trial, it would be his duty to withdraw But here, the member was not upon his trial, no report of a Committee has been made; the Senate does not sit in judgment upon his case—we are only prescribing rules under which testimony is to be taken; and could not see why it was proposed to deprive the legal member of his right to vote. If Mr. Berry was now on his trial, the case would be different. But in prescribing rules to take testimony, he could not perceive why the legal member from Orange should not be entitled to vote.

The Chair would remark, that his attention had been called to the authority quoted by the gentleman from Guilford. He viewed it as having reference to a change of an offence against a member.—The question was well settled, that a member had no right to vote on the question of retaining his seat; and the Chair held it not right that he should vote upon collateral and preliminary questions affecting the main question. The Speaker instanced the question of making the Report of the Committee the order of the day—if the Senator may vote on that question, he may vote on retaining his seat. He did not regard the authority quoted by the gentleman from Guilford as applicable to the case—but he was of opinion that it was not right for a member whose seat was contested to vote on collateral questions affecting the main question

Mr. Ashe then submitted a resolution, which the Chair ruled out of order, unless it was the sense of the Senate. Mr. Ashe had no disposition to press it, and withdrew the resolution.

Mr. Thompson, of Wake, desired to offer an amendment, in order to meet the views of Senators. He proposed that if the sitting member should file an affidavit, under oath, that longer time than three days is necessary to procure his testimony, he shall be allowed such time as he may deem requisite for that purpose.

Mr. Woodfin said it required no resolution to determine this matter. On proper affidavit being made, the Senate would extend the time. The power exists, and it would be the duty of this body, in the exercise of a sound discretion. The resolution leaves it discretionary with the party to have such time as he may deem necessary. The time will be allowed, as a matter of course, if the Senate think proper. But if it is left to the sitting member to apply for such time as he may require, he may require six months beyond the sitting of the senate. It would not then be in the discretion of the Senate, but of the sitting member, to allow his case to come on or not. The discretion was here, to be allowed in a proper way. It would never do to depend upon the mere discretion of the party interested, and to allow him just what time he chooses to ask. Mr. W. did not think he would ask unreasonable time, but no one should be the judge but the Senate. This resolution destroys our control over the case, and leaves the discretion with the sitting member.

Mr. Thompson remarked, if objections were made to the resolution, he had no objection to modify it. If the sitting member would have it in his power to be the judge, would not the contestant have the same privilege? How are we to ascertain? If either party is grieved, how are they to have time?

Mr. Woodfin. They have only to state the facts. The Senate has the power—and the palpable impolicy of passing this resolution is, that it gives the power to the party.

Mr. Thompson said his only purpose was to take no advantage; to secure an opportunity for ample justice to be done in this case. The Senate had a deep interest in this matter, and it was proper that we should act with credit to ourselves in the judgment of an observing world. He did not profess to know as much about this matter as other legal gentlemen—he thought the resolution tied the time down to three days. If longer time could be obtained, his end would be answered and his design secured. There was no doubt about it.

After a few remarks from Mr. Woodfin,

Mr. Bethel said he would prefer action; and would propose to amend the amendment, if in order.

Mr. Thompson then modified his amendment, so as to provide that, if the sitting member shall file his affidavit he shall be allowed reasonable time.

Mr. Bethel proposed to strike out "reasonable," and insert "not exceeding ten days."

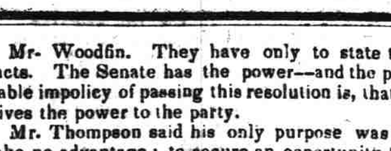
Mr. Gilmer suggested, if by either party filing his affidavit, ten days could be obtained, no discretion was left to the Senate.

Mr. Bethel said, if it would make the resolution less exceptionable, he would modify it so as to read, Resolved, that if the sitting member shall require longer time than three days, he shall be allowed ten.

Mr. Gilmer said he had no idea of cutting off the Senate from determining this question. By this resolution, without looking at the reasons, the Senate would be bound to grant the time requested. It don't leave the Senate to judge—and this he says is done to save time.

The question was then taken on Mr. Thompson's amendment as modified, when it was rejected: Yeas 22; Nays 24. Mr. Berry did not vote.

The question then recurred on adopting Mr. Gilmer's resolutions, when Mr. Ashe called for a division. The first resolution was then adopted, Ayes 24; Nays 22. The second was also adopted, Yeas 34; Nays 13.



PROCEEDINGS OF OUR

STATE LEGISLATURE.

TUESDAY, December 12, 1848.

SENATE.

Mr. Eborn introduced a bill to amend the 10th section of the 102d chapter of the Revised Statutes, concerning Pedlars. Referred to the Committee on the Judiciary.

Mr. Lillington presented the memorial of the Officers of the 63d Regiment of North Carolina Militia, relating to the state of the Militia laws. Referred to the Committee on Military Affairs.

Mr. Thomas, of Haywood, presented a memorial, praying for a Turnpike Road from Waynesville to the Tennessee line: Also, a petition of citizens of Cherokee, praying for a Turnpike road up the Nantihila river; both were referred to the Committee on Internal Improvements.

Mr. Patterson, from the Committee on Internal Improvements, to which was referred the bill to incorporate the Mecklenburg Agricultural Society, reported the same and recommended its passage.—Lies over.

Mr. Smith introduced Resolutions on the subject of Common Schools, which were referred to the Committee on Education.

Bills presented and read first time:—By Mr. Eborn, to incorporate Midway Male and Female Academy, in the County of Pitt, near Pactolus. By Mr. Gilmer, concerning the practice of the Law.—By Mr. Smith, to incorporate the Trustees of Chowan Female Institute, at Murfreesboro'.

Mr. Conner presented a bill to repeal an Act passed in 1839, entitled an Act concerning the Wardens of the Poor in the County of Lincoln. Passed first reading and referred to the Committee on the Judiciary.

The Chair announced a message from the House of Commons, transmitting a Resolution for a Joint Select Committee, to consider the expediency of altering the time of holding the General Assembly.—Concurred in; and the following gentlemen constitute the Senate Committee, viz: Messrs. Conner, Washington and Walker.

The following bills were read the third time and passed:—To unite the Roanoke Railroad and Seaboard and Roanoke Railroad, and for other purposes. To empower the Roanoke Navigation Company to become common carriers of Agricultural produce, goods, wares and merchandize, upon Roanoke, Dan and Staunton rivers. To incorporate Phalanx Lodge No. 10, I. O. O. F., in the Town of Washington. To incorporate the Town of Shelby, in Cleaveland County. To alter the time of holding the Spring and Fall Terms of Cleaveland County Courts. To incorporate Macon Academy, in the County of Wayne.

The following bills passed their second readings:—To amend the Act of 1836–7, entitled an Act to amend an Act to authorize the Governor to establish a Depot of Arms at Newbern. To incorporate the Island Ford Manufacturing Company. To incorporate Mt. Lebanon Lodge, No. 117, in Edgecomb.

Mr. Kendall called up the bill to pay witnesses for their attendance before a Clerk and Master, Commissioner to take an account, &c, which, after some discussion, was rejected.

A message was received from the House of Commons, informing the Senate that they have laid upon the table their resolutions to go into an election for U. S. Senator on the 20th instant, and proposing to go into that election to-day at 12 o'clock.

The question being on concurring in this proposition, Mr. Gilmer called for the Ayes and Noes.—They were taken as follows: Yeas 25; Nays 23.

The Senate then voted. When the name of Mr. Thomas, of Haywood, was called, he arose and said that his position was a peculiar one. He believed the will of his constituents was in favor of T. L. Clingman; and he therefore gave their vote instead of his own.

Mr. Davidson, from the Committe appointed to superintend the election of United States Senator, reported that there was no election. [See House proceedings for the joint vote.]

The bill to emancipate John Good, a slave, passed its second reading.

The bill to amend the Revised Statutes, chapter 104, concerning public bridges and ferries, was indefinitely postponed.

The bill to limit the term of Sheriffs, was laid upon the table, Yeas 32; Nays 17.

Mr. Lillington presented the resignation of the Hon. R. M. Pearson, as Judge of the Superior Court, which was read, and ordered to be sent to the other House.

And then on motion, the Senate adjourned.

HOUSE OF COMMONS.

The following matters were referred to the Committee on Propositions and Grievances: Mr. Hamrick presented a Memorial from sundry citizens of Gaston County.

Mr. Erwin introduced a bill in relation to an act laying off and establishing the County of McDowell.

Mr. Hicks introduced a bill to facilitate the collection of certain debts, &c. Referred to the Committee on the Judiciary.

Mr. Ferebee introduced a Resolution to send a message to the Senate, proposing to raise a Joint Select Committee, of one on the part of the Senate and two on the part of the House, to wait on Charles Manly, and inform him of his election as Governor of the State, &c. Adopted.

Mr. Martin offered a resolution, to refer so much of the Governor's Message as relates to School Commissioner, to the Committee on Education. Adopted.

Mr. Hargrove introduced a bill to exempt the Wardens of the Poor, and the County Trustee of the County of Anson, from Military duty. Referred to the Committee on Private bills.

Mr. Palmer offered a resolution, [illegible] Judiciary Committee to inquire into [illegible] of establishing a mode for removing [illegible] Peace from office for misbehavior.

A message was received from the [illegible] mitting Resolutions of thanks to Mr. [illegible] ted.

Another message was received [illegible] transmitting several Resolutions [illegible] the day for the election of U. S. Senator, [illegible] On motion of Mr. Hays, the Resolutions [illegible] on the table.

Mr. T. R. Caldwell moved to [illegible] the Senate, proposing to go into the election of Senator, to-day, at 12 o'clock.

Mr. Griggs moved to lay the proposition on the table. Lost.

The question recurring on the motion of Mr. Caldwell, was decided in the affirmative.

A message was received from the Senate in relation to an omission in the distribution of the revised Statutes, and the Decisions of the Supreme Court; and also, calling the attention of the members of the General Assembly, to the system of Exchanges. Referred to the Committee on the Library.

Mr. Caldwell, of Guilford, introduced a resolution, instructing the Committee on Propositions to inquire into the propriety of allowing the Treasurer of State to issue small bills. Adopted.

Mr. Shuford introduced a bill to appoint Tax Collectors in every County in the State. Referred to the Committee on Finance.

Mr. Nixon introduced a resolution to appoint a Clerk of the County Court of Rowan. Referred to the Committee on Judiciary.

Mr. Courts, from the Committee on Propositions and Grievances, reported unfavorably on the bill to establish a new County, named Cleveland. Lies over.

Mr. McDowell, of Iredell, moved to lay the bill on the table. Carried.

Mr. Dancy, from the Committee on Internal Improvements, reported back to the House the bill to incorporate the Company of two Gates across a public highway, and asked to be discharged from the further consideration of the same.

On motion of Mr. Biggs, the bill was laid on the table.

Mr. Dancy, from the same Committee, reported favorably to the bill to incorporate the Fayetteville Encampment, in the Town of Washington. Ordered to be engrossed, passed its 2d reading. Also favorably to the bill granting the County Courts of Cumberland jurisdiction over certain public Roads. Passed its 2d reading.

A message was then received from the Senate concuring in the proposition from the House to adjourn to-day at 12 o'clock, for U. S. Senator.

Mr. Dancy, from the Committee on Internal Improvements, reported favorably to the bill to incorporate a company, in the Town of Fayetteville. Passed its 2d reading.

Mr. Satterthwaite, from the Joint Committee, to whom was referred the Resolutions of the Legislature of Maryland, in relation to the Baltimore and Ohio Railroad, reported them back to the House, and asked to be excused from the further consideration of the same. Concurred in.

The same gentleman reported back the bill to amend the resolutions of the Legislature of Virginia, and begged to be discharged form their further consideration. Concurred in.

The resolution in favor of Adam Brown passed its 3rd reading.

The following bills passed their second reading: The bill to incorporate Male Academy, in the County of Iredell. The bill to incorporate the Statesville Female Academy. The bill to incorporate the Dallas Male Academy. The bill to incorporate Male College in the County of Anson. The bill to alter the Road from Newton to Morganton, and to appropriate the County Courts of Mecklenburg and Lincoln to obtain funds to the County Courts of Burke. The bill to condemn a part of Hayne Street, in the Town of Statesville, for the purpose of erecting a Jail. The bill to incorporate Blount Creek manufacturing Company, in the town of Fayetteville. To incorporate the Fayetteville Guards. To amend an Act entitled an Act to regulate the Inspection of Turpentine.

Mr. Leach, of Davidson, nominated Thomas E. Badger for Senator of United States, and moved to send a message to the Senate, informing them of said nomination. Carried.

The Speaker announced the next business in order for the execution of the Joint order for the election of United States Senator.

Committee on the part of the House to attend the election of Senator, Messrs. [illegible] ders.

The House then proceeded to [illegible]

The Resolution in favor of [illegible] ers passed 3d reading.

Mr. Long from the Committee [illegible] election of Senator, reported as follows: [illegible] cast. Badger 82; Clingman 6; [illegible] 7; Edwards 13; Jas. B. Shepard [illegible] Fisher 6; Venable 2, Biggs 2; [illegible] Eaton 1.—No election.

WEDNESDAY, [illegible]

SENATE.

Mr. Patterson presented a memorial [illegible] tants of Wilkes County, against the [illegible] County of Watauga; which with the [illegible] it relates, was laid upon the table.

Mr. Walker, from the Committee [illegible] tions and Grievances, reported in the case [illegible] cipate John Williams, a Slave, [illegible] ment.

Mr. Patterson, from the Committee [illegible] Improvements, reported the bill [illegible] making a Turnpike Road from Shelby [illegible] the line of the State of Georgia, [illegible] ment, and recommended its passage.

Mr. Halsey presented a resolution [illegible] for a Select Committee of one from [illegible] District, to consider the expediency [illegible] additional Judicial Districts.

Bills presented.—By Mr. Woodfin, [illegible] act of 1846-7, entitled an act to [illegible] re-assessment of the lands of the [illegible] accurate enlistment of taxable [illegible] reading. By Mr. Washington, [illegible] passed in 1846-7, to incorporate [illegible] Company, No 1, in the Town of [illegible] over.

Mr. Smith, on leave, from the [illegible] the Judiciary, reported a bill to [illegible] settlement of estates of deceased [illegible] an amendment, and recommended [illegible] Lies over.

The engrossed resolution in [illegible] State's claim against the General [illegible] and the one in favor of O. A. Bynum [illegible] first reading.

The following bills passed their [illegible] ing:—To incorporate the Trustees [illegible] Male and Female Academy, [illegible] Pitt. Concerning the Practice of [illegible] emancipate James G. Hostler. [illegible] Explanatory of the 20th Section [illegible] Rev'ed Statutes, entitled crimes [illegible] To incorporate the Trustees of [illegible] Institute in Murfreesborough. [illegible]

To incorporate Mecklenburg [illegible] ciety. The bill to amend the [illegible] Chapter 102, Revised code, [illegible] was ordered, with proposed [illegible] printed.

The following bills passed their [illegible] To incorporate Mt. Lebanon [illegible] Edgecomb. To incorporate [illegible] facturing Company, at Franklin [illegible] dolph. To amend an act to [illegible] nor to establish a depot of Arms [illegible] emancipate John Good, a Slave.

When this latter bill came up, [illegible] and said he was desirous of knowing [illegible] tleman who introduced the bill, [illegible] for its passage.

Mr. Washington said he had [illegible] and had hoped it would pass without [illegible] any quarter. He (Mr. W.) was [illegible] to a promiscuous and general [illegible] with the privilege of remaining [illegible] nator from Tyrrell (Mr. Halsey) [illegible] but this was a peculiar case, [illegible] strongly to the Legislature for [illegible]

[Continued on First Page.]