

with us in opinion, thought that the Executive Commission should be entirely overlooked; and that it was the duty of the Committee to proceed at once to ascertain which party had received a majority of all votes, good and bad, given at the polls; and were, therefore, entitled to the returns—and submitted amendments to that effect.

This view of the subject we deem utterly fallacious; but time will not permit us to enter into the argument. The consequences resulting from this novel doctrine, are well illustrated by the scenes of disorder and confusion which resulted from its application at the present session—scenes in a high degree, discreditable to the house, and endangering the peace of the country, and which must greatly impair the confidence of all right-thinking people in the perpetuity of our free institutions.

Upon a careful examination of the laws of New Jersey, we ascertained that the Governor and Privy Council were mere ministerial officers, charged with a certain specified duty, plainly set forth, viz: to ascertain and determine which one of the persons voted for, received the greatest number of votes, according to the returns made by the clerks of the several Counties of the State. That the individuals who were commissioned by the Governor of New Jersey, as the Representatives of that State, had received the greatest number of votes thus returned according to law, was a fact not disputed or denied.

Finding this difference of opinion, however, to exist in the Committee as to the basis of a report, the mover of the original proposition modified the same, with the view of reaching the sense of the Committee; and merely proposed, in general terms, that a preliminary report should be made, designating the individuals who should occupy the vacant seats, until the question of ultimate right could be determined; thus manifesting a disposition to have the seats filled, as the Committee and the House might determine, according to their sense of justice and propriety. But, from an apprehension, as we presume, that they could not succeed in the untenable ground they had taken, that the report should be made favorable to those who barely obtained a majority of all the votes, legal and illegal, given at the election, the modified resolution was likewise resisted; and a substitute offered, which proposed to inquire who were entitled to be returned as members-elect; evidently on the ground of good and bad votes; for when it was proposed to insert an amendment, which would make the case turn on the majority of legal votes, such amendment was strenuously resisted, and carried only by the casting vote of the Chairman. This resolution, as ultimately adopted, was as follows:

Resolved, That this committee will now proceed to ascertain which five of the ten individuals claiming the five vacant seats from New Jersey, received a majority of legal votes, and therefore, are duly elected Members of the 26th Congress, from that State, according to the Constitution of the United States, and the laws of New Jersey.

Thus it will be perceived that the committee came to an early determination to investigate the ballot boxes, and ascertain who were entitled to the seats on the ground of having received a majority of legal votes, in which decision we acquiesced; and, although our opinions were unchanged as to the propriety of the views we had expressed, we determined to make no farther effort to procure a result that, in our judgments, every principle of justice demanded.

We then proceeded to the consideration of another resolution offered by one of the gentlemen of the majority, which, as amended and ultimately adopted, is as follows:

Resolved further, That whilst in the opinion of this committee, the certificates of the Governor of New Jersey are *prima facie* evidence that those who hold them are entitled to seats, they are not conclusive evidence as to the ultimate right; and that such certificates, being contested, such right must depend on the majority of legal votes given in conformity with the constitution of the United States and the laws of New Jersey.

On this resolution a division was called for, to wit, on the first branch, as follows:

Resolved further, That whilst in the opinion of this committee the certificates of the Governor of New Jersey are *prima facie* evidence that those who hold them are entitled to the seats, they are not conclusive evidence as to the ultimate right.

And those who have paid much attention to the progress of this question, both in the House and the country, will perhaps be somewhat amazed to hear that this proposition for which alone we had contended in the House, and the defeat of which had caused a sovereign State in this Union to be deprived of five-sixths of her representation on the floor of Congress, and had excited the public mind in every part of the confederacy, met with the unanimous sanction of the committee.

The resolutions, as adopted, was communicated to all the parties engaged in the contest under the following resolution:

Resolved, That the foregoing resolutions be communicated to each of the claimants to the vacant seats from the State of New Jersey, and that this committee will hear them at their committee room on the 29th day of January, instant, at 10 o'clock in the forenoon, on the subject of the measures which should be adopted to obtain the evidence applicable to inquiry before the committee.

Accordingly, on the 29th of January, the parties appeared before the committee, and there was a likelihood that after fifteen days of time and labor spent by the committee before they could arrive at any conclusion, we should at once proceed, in pursuance of these resolutions, to ascertain which five of the ten individuals claiming seats had now a majority of legal votes, and were, when very unexpectedly to the undersigned, the chairman of the committee moved a reconsideration of these resolutions, with a view to offer a substitute. They were reconsidered accordingly, again discussed, and laid on the table, and amended, modified and discussed, and were finally adopted after two days of additional labor and are as follows:

Resolved, That the credentials of the Governor of New Jersey are *prima facie* evidence that those who hold them are entitled to seats, but, being questioned on the ground that all the votes polled were not counted, this committee will now proceed to inquire and ascertain who of the ten claimants for the five contested seats received the greatest number of votes polled in conformity with the laws of New Jersey, at the late election of Members of Congress in that State.

Resolved, That all the votes received by authorized officers acting in conformity with the laws are *prima facie* legal; but if being alleged and offered to be sustained, that pluralities were obtained by means of illegal votes and frauds perpetrated on the ballot-box, this committee will admit evidence as to the truth of these allegations, and inquire who of the claimants received the greatest number of legal votes in conformity with the Constitution of the United States and the laws of New Jersey, and therefore are entitled to occupy, as members of the 26th Congress, the five contested seats from that State.

Resolved, That the adoption of the above resolutions does not preclude this committee from referring the facts and testimony, with its opinion thereon for the consideration of the House, at any stage of its proceedings that it may deem it expedient to do so.

Resolved, That a copy of the foregoing resolutions be communicated to each of the claimants to the vacant seats from New Jersey, and that they be informed that the committee has reconsidered and indefinitely postponed the resolutions furnished them on the 29th instant, and that this committee will hear them at their committee room on Saturday, the first February proximo, at ten o'clock in the forenoon, on the subject of the measures which should be adopted to obtain the evidence applicable to inquiry before the committee.

The parties accordingly met again in the Committee room, and after they were severally heard the Committee adopted the following resolution:

Resolved, That we will now take up the testimony which has been referred to this committee in the New Jersey case, with a view of hearing and deciding upon its competency only; leaving its sufficiency to be determined when the testimony is finally closed by order of the Committee; and if, during the investigation of the subject, it shall be desired by either party to furnish additional testimony, that then the parties be allowed such reasonable time as may be determined by the committee, to take such additional testimony, in the manner prescribed by the laws of New Jersey relating to contested elections, unless the parties agree upon some other mode which may be sanctioned by the committee.

Thus, it will be perceived, that before a paper purporting to be testimony in this case, was adopted by the committee, it was resolved to decide upon its competency alone; and it was further resolved, that time should be allowed either party requiring it, to take additional testimony, with a view, as we supposed, of ascertaining the whole truth, touching the merits of the election.

This resolution, the committee adopted, without knowing how it would affect the interests of either party, or which should be the first to ask for time; for it depended on what portion of the testimony might be received, and what rejected on either side.

In pursuance thereof, the Committee proceeded to hear objections and arguments on the competency of the evidence. Most of the testimony on the part of the non-commissioned claimants, consisted of certificates and sworn copies of papers, the affidavits appended to which were *ex parte*, and taken without notice. And most of that adduced by the commissioned claimants, besides their commissions, consisted of depositions taken before State officers in New Jersey, upon notice to the opposite party. Numerous objections were taken to the competency of this evidence, but the undersigned felt no embarrassment in respect to any of them, except that which raised an inquiry as to the sufficiency of the notice of taking the depositions; there being no law of Congress or of the State, applicable to this case, directing the mode of taking evidence, the committee experienced great difficulty in finding any rule that would do justice to all concerned. The usage of the House for many years, had sanctioned the practice of receiving depositions, in cases of contested election, taken on reasonable notice; but had not settled what was reasonable notice. The commissioned members indicated a willingness that, inasmuch as they were to return to New Jersey to obtain additional proofs, the committee should reject all testimony in respect to which there was much doubt; to the end that they might retake the evidence, and place the matter beyond dispute.

It is proper to state that this suggestion, made from motives of prudence, and wisely influenced the action of one of the undersigned, who voted for the exclusion of testimony which he would not have hesitated to receive, if compelled to proceed at once and dispose of the case on its merits. The Chairman seemed disposed to take a liberal view of the subject, & to admit nearly the whole of the evidence on both sides; treating what we deemed objections to competency, as mere objections to the sufficiency of the proofs—the effect of which was, with the aid of the other four members concurring in the report already submitted, to let in much the most important part of the testimony adduced by the non-commissioned claimants, though taken *ex parte* and without notice. But when the testimony on the other side came under consideration, the same four members voted against its competency, though taken on notices, in some instances at least, ample and abundant; and it so happened that in consequence of the doubts of one of the undersigned, and the influence of a wish which he indulged to have the case cleared of all embarrassment, by re-taking the evidence, much the most important part of the proof offered by the commissioned claimants was rejected, and the testimony before the committee was left in a very confused, imperfect, and chaotic state, and in such a condition as to render it, in the judgment of the undersigned, in a high degree unjust to make it the basis of the action: either in the committee or the House, for any purpose whatever.

When the Committee had thus disposed of the questions of competency arising on the evidence before it, the commissioned members again renewed their application for further time, to finish taking their testimony; and again verbally stated to the Committee the various difficulties which had prevented the completion of their statements before the session of Congress. And this protest not being denied by the non-commissioned claimants, the committee, in consideration of those difficulties, and also in reference to the fact that such of the testimony adduced had been rejected in the manner above stated, deemed the request reasonable, and determined to grant it; and both parties being decidedly of the opinion that the testimony could not be taken before the second Monday in April next, the committee adopted a preamble and resolution as follows:

Whereas, the people of the State of New Jersey are at present deprived of five-sixths of their Representation in the House of Representatives, and it being highly expedient that the decision of the question between the several claimants to the five contested seats in the House aforesaid, be made as speedily as practicable, consistent with a due investigation and deliberation, and J. B. Ayer, William Halsted and others, having made application to the committee, for time to take further evidence, to maintain their right to seats in said House, and the contending having alleged that, if the committee go into an investigation of the question of who received the plurality of legal votes, they desire time also to take testimony:

Therefore, Resolved, That the chairman be required to notify the several claimants aforesaid, that this committee will not proceed to a final decision of the question of ultimate right depending before them, until the second Monday in April next, at which time the committee will report, the proofs to be closed, and will not receive any testimony taken by either of the parties after that time, but nothing in this resolution shall prevent the committee at any time before that day from taking up and deciding said case, if the parties shall declare themselves ready with all their testimony.

In justice to the chairman of the committee,

it should be stated, that he intended to examine the examination of testimony, the Committee would report that all the votes given at the election were lawful votes, because they were enjoyed to report forthwith, when they were expressly required to report who received the greatest number of lawful votes only from the whole State; and if there was no testimony before the committee to enable them to report forthwith, what they were required to report—Why did they not state that fact to the House? Why did they not report, that the testimony is incomplete, and the parties to the contest are now, by order of the committee, at home, taking evidence to establish what you have instructed us to report? Why did you not give to that pungent word 'forthwith,' its plain, common sense meaning, as soon as practicable, without unnecessary delay? But, instead of that, it is made to report the whole resolution.—What says the report?

"When the proposition to instruct was originally introduced as an amendment to the application with which the committee had come before the House, its intent was clear that a report should be immediately made of the names of those who had received the greatest number of votes at the last Congressional election in New Jersey. If any thing more was wanting to explain the meaning of this proposition, it is to be found in the *proviso* which was added, and which clearly indicated that the action which the House was moved to demand, did not contemplate an interference with the course adopted by the committee for the 'taking of testimony, and deciding the case upon the merits of the election.'

And, yet, when the resolution is so altered as to require the committee to report upon the lawful votes only, it means precisely what was intended before the amendment was adopted. Such a course of reasoning, we take for granted, cannot be satisfactory, either to the House or the country.

The report proceeds to say: "At the same time, the committee cannot entirely (mark the word) entirely overlook the word lawful, or strike that from the resolution, which was inserted upon a contest so close, as to require a casting vote for its decision;" which casting vote may as well be ascribed to the chairman of the committee, as to the Speaker of the House, for one vote counted as much as the other; and one would respectfully inquire whether the Hon. Chairman, himself, who drafted that report, attached no importance to the insertion of the word lawful, at the time he voted for it.

The report goes on: "There is but one other basis left, and that is the *prima facie* case upon the returns of the local officers of the several polls; and the nature of the controversy taken into consideration, it can scarcely be doubted that to this basis the resolution looked."

But, the very subject of the controversy before the House, was whether the resolution should look to that basis or not—whether it should look to the whole vote, or the lawful votes only; and it had been decided by the casting vote referred to, that it should look to the lawful vote only; and not to the whole vote given, as originally proposed by the resolution, and while the committee "cannot entirely overlook the word lawful," or strike it from the resolution, they find no difficulty in disregarding its plain import and meaning, and they report the very matter they were instructed, by the House, not to report, and this not from a desire to make such a report, (because five members of that committee had constantly refused to make a report based upon any such principle,) but in strict obedience to the instructions of the House. But, in addition to this "pungent word, forthwith," it is said "the proviso qualified the meaning of the word lawful. Now, the construction that we give to the proviso, is, that it qualifies this word, 'forthwith,' and was intended as a qualification of that word, when first introduced. That is to say, that whilst you are required to report, forthwith, which five of these ten gentlemen received the greatest number of votes from the whole State, nothing herein contained shall be so construed as to prevent, or delay the action of the committee in taking testimony, or deciding said case upon the merits of the election."

It appears to us that there can be but one opinion on this subject, that the proviso was intended as a qualification of the "forthwith" report to be made; and it is totally incomprehensible to us, how the minds of the committee, could have been drawn into the strange error, that the proviso was intended to qualify what, at the time it was written, constituted no part of the resolution.

The subsequent introduction of the word lawful, as we conceive, not only does, but was intended to qualify, control and explain, the whole resolution; it was an explanation of itself. But the Committee, have determined that the word, forthwith and the proviso, which were intended to be explained, by the word lawful, themselves, explain the explanation, or, in other words, nullifies and renders altogether nugatory, this most important and all controlling explanatory amendment.

There is one view of this subject that is truly singular, however, and that is, that in the early part of the session, when the same facts were admitted before the House that are now reported by the committee, there was not a member of this body prepared to give the seats to those who received a majority of all the votes given, including the bad with the good. Why was the case ever referred to the committee? The House having refused to recognize those persons as members who have the legal commissions, and not venturing at that time to recognize those who had no returns, and only claimed that they had received a majority of legal and illegal votes, the whole matter was referred to a committee for investigation under such circumstances as to indicate conclusively, that those of this body who were in favor of going behind the commissions, contemplated an inquiry the most ample and comprehensive.

To this result the undersigned are led by a review of all the circumstances which have attended the House on this subject, from the commencement of the session, as well as by the flagrant injustice which will mark the contrary course, leading, with a haste unparalleled, to the decision of a great and important question in the absence of the parties, and contrary to the expectations which they had been authorized to indulge. In order to bring this subject more fully before the House, the undersigned deem it proper to state, that immediately upon the

examining of testimony, the Committee would report that all the votes given at the election were lawful votes, because they were enjoyed to report forthwith, when they were expressly required to report who received the greatest number of lawful votes only from the whole State; and if there was no testimony before the committee to enable them to report forthwith, what they were required to report—Why did they not state that fact to the House? Why did they not report, that the testimony is incomplete, and the parties to the contest are now, by order of the committee, at home, taking evidence to establish what you have instructed us to report? Why did you not give to that pungent word 'forthwith,' its plain, common sense meaning, as soon as practicable, without unnecessary delay? But, instead of that, it is made to report the whole resolution.—What says the report?

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There is one view of this subject that is truly singular, however, and that is, that in the early part of the session, when the same facts were admitted before the House that are now reported by the committee, there was not a member of this body prepared to give the seats to those who received a majority of all the votes given, including the bad with the good. Why was the case ever referred to the committee? The House having refused to recognize those persons as members who have the legal commissions, and not venturing at that time to recognize those who had no returns, and only claimed that they had received a majority of legal and illegal votes, the whole matter was referred to a committee for investigation under such circumstances as to indicate conclusively, that those of this body who were in favor of going behind the commissions, contemplated an inquiry the most ample and comprehensive.

assembling of the committee, under the resolution herein examined, the majority, without considering the proofs admitted to be competent, the tendency of which was to show that unlawful votes had been polled for non-commissioned claimants, settled 'forthwith,' the principles upon which the report should be made; and peremptorily instructed the Chairman to add the votes of Milville and South Amboy, to those counted by the Governor in Privy Council: thus resolving the duties of the committee into the solution of an arithmetical problem of the most simple character.

But there is an additional and most imposing fact which we desire to present for the consideration of the House, before they decide this important question.

At the moment the committee had the report under consideration, and before any vote was taken thereon, the Chairman had in possession a sealed package of depositions, addressed to the Speaker of the House, to the care of the Chairman, and endorsed 'depositions in the New Jersey case,' forwarded by the commissioned claimants; and which the majority of the Committee refused to send to the Speaker, to the end that the same might be opened, and taken into consideration in the decision of the question then pending in committee. On examination, we find that the said depositions establish and prove illegal votes cast for the non-commissioned claimants, which, added to other unlawful votes already proven are sufficient to give one of the commissioned claimants [Mr. Stratton] his seat, on the ground of receiving a majority of lawful votes cast at the polls.

The following table will show how many illegal votes the commissioned members must prove (if the votes of Milville and South Amboy be added) to establish their right over their opponents to the vacant seats, viz:

Mr. Stratton over Mr. Kille	89
Maxwell " Ryall,	59
Halsted " Dickerson,	117
York " Cooper	135
Ayerigg " Vroom,	199

The proofs laid in the first instance before the committee, would have established both Messrs. Stratton and Maxwell in their seats had the same been in all respects competent.

The injustice of refusing to examine the new depositions is the more apparent from the fact that they were taken as substitutes for other depositions on the same subject, which had been rejected under circumstances herein before detailed. Their weight and effect is greatly enhanced by the fact that the contesting party was present, and cross-examined the witnesses.

The undersigned made strenuous efforts to induce the majority of the committee to strike out the word 'lawful' whenever it appears in their report as qualifying the word 'votes,' so that the language of the report might correspond with the principle on which it is based, and thus all misapprehension, either by the House or the country, be excluded; and also to induce the majority to insert a clause in their report to indicate opposition to it in the committee, and to grant us time for the exposition of our views through the medium of a counter-report; but their efforts proved wholly unavailing.

We have said enough, we trust to establish the propriety of having the report of the Committee recommitted; that the instructions given may be literally and faithfully obeyed.

With this statement of facts, to sustain which we respectfully ask for the printing of all the documents, we leave the case to the House; and if it be contemplated to make a report, submitted under such circumstances, the basis of any action that will compromise the rights of either of the parties in this controversy, we beg leave, as members of the Committee, as Representatives of the people, and in behalf of the sovereign States of this Union, to protest against what we conceive a most indefensible and unlawful proceeding.

MILLARD FILLMORE,  
JNO. M. BOTT'S,  
GEO. W. CRABB,  
TRUMAN SMITH.  
Washington, March 10, 1845.

**Taken up and Committed**  
To the County Prison of Rowan, on the 14th Inst.

**2 NEGRO MEN,**  
—Lewis seems to be about 25 years of age, and about 5 feet 7 or 8 inches high, quick spoken and quite black;—altogether a very likely boy.  
Henson (or Henry) seems to be younger than Lewis, and is not as tall by an inch or more.—He is very black, stout built and likely.  
They say that they ran away from William Ellison in South Carolina; and that they were going back to Virginia, from whence they were taken. The owner is requested to come forward, prove property, pay charges and take them away, or they will be dealt with according to law.

DAVID KERNS, Jailor.  
March 27, 1845—455

**Just Received and for Sale, Wholesale or Retail,**  
100 Kegs Nails assorted sizes,  
10 Hbds. Sugar,  
15 do Molasses,  
250 Sacks Salt,  
10 Doz. German Grass Sythes,  
6 do English Grain do.  
50 Bbls. Superfine Flour,  
20 Boxes Bunch Raisins.  
By J. & W. MURPHY.  
Salisbury March 27, 1845.

**NAILS**  
From the South Carolina Manufacturing Company.

THE Subscriber has received a large supply of Nails from the above Company, which are equal, if not superior to Northern make, and have made arrangements for a regular supply, which will be sold wholesale or retail on reasonable terms.  
MICHAEL BROWN.  
Salisbury March 27th 1845.—35f

We are authorized to certify that M. SMITH, a candidate for office of Sheriff of Davidson County, is at present in the State of Tennessee, Kentucky or affects to think that Tennessee, but says that he does not appear to be in the State of Ohio. Of course Mr. Fisher gives him the Milvile district, but he has three or four thousand votes, which is a hard battle.

We have no doubt that we give Saunders the seat, we have as little doubt that we make it good; if he has him the majority of the district, it is a woeful matter, the only one where we have a chance to succeed, but last week (at the time we took the least possible public opinion, many are convinced that this isism in every shape and willows for Rowan.

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**RESOLUTIONS OF THE HOUSE OF REPRESENTATIVES**

We give below the intelligent body as a matter of course. The high character of the people of the individual, no commendation from several others of this State, to the misrule of the sign the proceeding figure in politics, could be brought to counter resolution.

We, the Grand Jurors of Rowan, having appropriate duties, desire to give a public notice to the State of public our eyes to the fact now exists in the State, as vexed and Trade is dull and for market are scarce, and our citizens more afraid to trust.

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