

Senate
JOURNAL

OF THE

(55)

EXTRA SESSION

OF THE

TWENTY-SECOND SENATE

OF THE

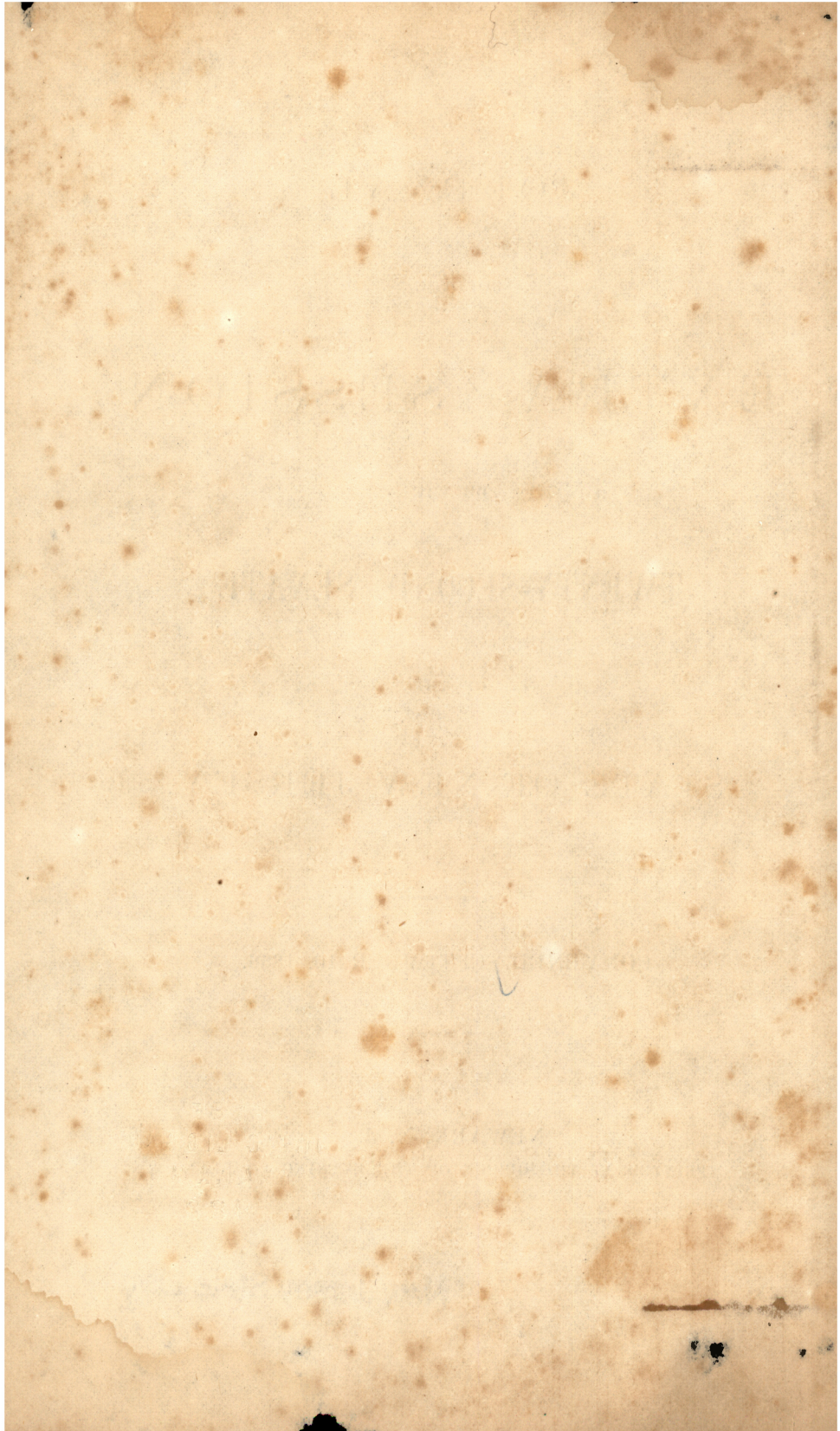
STATE OF NEW JERSEY.

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JOURNAL OF THE SENATE,
EXTRA SESSION.

STATE OF NEW JERSEY, }
SENATE CHAMBER, }
TRENTON, Monday, September 10, 1866. }

This being the day designated by the Proclamation of His Excellency, the Governor, for the meeting of the Ninetieth Legislature in extra session,

At 3 o'clock, P. M., the Senate met in the Senate Chamber, and was called to order by the Hon. James M. Scovel, of the County of Camden, President of the Senate.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared in their places, and answered to the call:

Messrs. Acton, Blackman, Buckley, Cobb, Dater, Doughty, Grier, Horner, Little, Ludlam, Martin, Reeves, Richey, Robins, Scovel (President,) Trusdell, Winfield, Wright, Wurts—19.

Under the direction of the President, the Proclamation of His Excellency, the Governor, convening the Legislature, was read by the Secretary, as follows:

Proclamation by Marcus L. Ward, Governor of the State of New Jersey:

WHEREAS, The Honorable Secretary of State of the United States has transmitted to me an Amendment to the Constitution

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of the United States, to be submitted to the Legislature of this State for its ratification; and whereas, in consequence of an existing vacancy, New Jersey is not fully represented in the Senate of the United States, to the detriment of important interests;

Therefore, I, Marcus L. Ward, Governor of the State of New Jersey, by virtue of the power vested in me by the Constitution, do convene the Legislature of this State, hereby requiring the Senators and the Members of the General Assembly to assemble in their respective chambers at the State House, in the city of Trenton, on Monday, the Tenth day of September, at three o'clock in the afternoon..

In testimony whereof, I have hereunto set my hand, and caused the great seal of the State of New Jersey to be affixed. Done at Trenton, this thirtieth day of August, [L.S.] in the year of our Lord, one thousand eight hundred and sixty-six, and of the Independence of the United States the ninety-first.

MARCUS L. WARD.

By the Governor,

H. N. CONGAR, Secretary of State.

The President then addressed the Senate as follows :

Senators: We are called here to-day in extra session by the Proclamation of His Excellency, the Governor.

I congratulate you that after the long and somewhat stormy session which ended on the 5th of April last, we are met together again to discharge the public trusts confided to us by our several constituencies.

I hope that however widely we may differ upon the great questions which many of us think so nearly concern the safety and permanence of Republican Government in America, we may agree in this, that passions or asperities of politics shall not lead any of us to forget the "sweet small courtesies of life." In that conflict of ideas which convulses this country, and divides us into adverse parties, each holding with tenacity to opinions which must triumph or fail at the ballot, we can still remember that we ought never to carry political warfare beyond the views within which each of us cherish the sentiments which become us as men and as gentlemen.

Let us endeavor to be just to all men; to perform our duties fearlessly as God gives us to see the right. May the wisdom which cometh from above, control this session of the Legislature, and when we part, I trust every Senator may go home again to his

constituents—returning with the consciousness that he has acted as it becomes every good citizen and every patriot to act, forgetting himself and going forward in the line of his duty firmly and with fearlessness.

At this convention of the Legislature, let us boldly discharge our duty in guarding the interest and honor of New Jersey. And when an amended Constitution guarantees liberty to all, limited by the like liberty to each, New Jersey, our constituents, and the world will thank us for a fidelity to liberty which did not falter in the hour of danger.

On motion of Mr. Buckley,

Ordered, That the Secretary inform the House of Assembly that the Senate has convened in obedience to the proclamation of His Excellency, the Governor, and is now ready to proceed to business.

A message was received from the House of Assembly by the hands of Mr. Cooper, their Clerk, and read, as follows :

HOUSE OF ASSEMBLY,
September 10, 1866. }

MR. PRESIDENT :

I am directed by the House of Assembly to inform the Senate that the House of Assembly has met and organized under the proclamation of the Governor, and has passed the following concurrent resolution :

Resolved, (Senate concurring,) That a Joint Committee of the two Houses of the Legislature be appointed to wait upon His Excellency, the Governor, and inform him that in compliance with his proclamation, they have convened, and are now ready to receive any communication that he may think proper to make.

And that the House of Assembly has appointed Messrs. Ramsey, Holmes and Green as said Committee on the part of the House.

G. B. COOPER, *Clerk*.

Mr. Robins moved that the Senate do concur in the resolution from the House of Assembly.

Which motion was agreed to, and the President appointed Messrs.

Buckley, Trusdell and Ludlam as said Committee on the part of the Senate.

On motion of Mr. Buckley,

Ordered, That the Secretary inform the House of Assembly that the Senate has concurred in said resolution, and appointed the Committee on the part of the Senate.

Mr. Buckley, from the Committee to wait upon His Excellency, the Governor, reported that the Committee had discharged that duty and that His Excellency, the Governor, would communicate with the Senate and Assembly immediately.

A message was received from His Excellency, the Governor, by the hands of his private secretary, William L. Dayton, Esq., and was read by the Secretary, as follows :

Gentlemen of the Senate and General Assembly :

The Constitution of New Jersey confers upon the Executive the power of convening the Legislature whenever, in his opinion, public necessity requires it. All will concede that this power should not be exercised on light and trivial considerations. There should be such reasons for the act as would commend it to the approval of the people and of their representatives in the Legislature. It ought to be done with a strict and jealous regard to the public interests and welfare, and, in this spirit, I have assumed the responsibility of calling this meeting of the Senate and General Assembly, constituting the Legislature of New Jersey.

The true and earnest patriot cannot regard the condition of the country without the deepest anxiety. The States recently in rebellion do not exhibit the spirit of loyalty which alone can give confidence to the public mind. Everywhere doubt and uncertainty have taken the place of reliance and trust. From many of the States recently in revolt, we hear of deeds of violence and murder, which excite our just indignation. We are assured that there the loyal and true citizens are again under the ban of that malignant spirit which incited and sustained the rebellion. We cannot wisely ignore this condition of public affairs. It must be met not by recreancy to ennobling principles; not by timidity of purpose and unsafe concessions, but by strengthening loyalty through wise and considerate statesmanship. The nation requires a prompt and final settlement of all the questions at issue, so that union, peace and prosperity, in the fullest sense, may return to the country and government.

By the Constitution of the United States the legislation required for the general security and public welfare of the people, is intrusted to Congress, and to that we must look for such a plan of adjustment as will punish treason, protect loyalty, and secure the national Government. When this plan has been devised and adopted, it will be the duty of the Executive to see that it is enforced. The claim that would unite the power to make and to enforce laws and proceedings for the public welfare is untenable under our Constitution and Government. After a full examination, and a protracted discussion, it was decided by Congress that a Constitutional Amendment, defining citizenship, uniting representation with suffrage, excluding from important offices the leaders of the rebellion, sustaining the inviolability of the debt incurred for the suppression of the rebellion, and preventing the assumption of that created by treason, was a wise, just and loyal adjustment of all the points involved.

Such an amendment to the Constitution was adopted by the required two-thirds of the Senate and House of Representatives, and it has been transmitted to me by the Secretary of State of the United States for ratification by the Legislature of this State.

I herewith enclose a copy of the Joint Resolutions passed by Congress, June 13, 1866, proposing an amendment to the Constitution of the United States, in the following words :

JOINT RESOLUTION proposing an amendment to the Constitution of the United States :

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely :

ARTICLE XVI.—SECTION 1. All persons born or naturalized in the United States and subjected to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole

number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or an officer of the United States, or a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

I recommend the ratification of the proposed Amendment to the Constitution by the Legislature of the State of New Jersey. I regard it as the most lenient amnesty ever offered to treason, while every provision is wisely adapted to the welfare of the whole country. Its immediate adoption by three-fourths of the States will insure the settlement of all the questions at issue, and unite a whole people in the work of perpetuating and strengthening a free government.

While questions of grave importance are pressing upon the attention of Congress, New Jersey—through an existing vacancy, and the protracted illness of one of its Senators—is unrepresented in the Senate of the United States. As the existing vacancy took place during the first meeting of the Legislature, no appointment

could be made by me, and I regard your election of a Senator as only second in importance to the ratification of the Constitutional amendment.

Since your first meeting an Act has been passed by Congress, and approved by the President, regulating the times and manner of holding elections for Senators in Congress, a copy of which I herewith transmit. It is designed to render as certain as possible the representation of the States in the Senate, by preventing all factious opposition to the will of a majority of the Legislature.

Trusting that your deliberations and your actions may inure to the well-being of the State and nation, I commit these subjects into your hands. I feel confident that the Providence which has guarded us thus far will evoke good out of evil, and make us a people worthy of the blessings we enjoy.

MARCUS L. WARD.

TRENTON, N. J., September 10, 1866.

[PUBLIC—No. 142.]

AN ACT to regulate the times and manner of holding elections for Senators in Congress.

BE IT ENACTED *by the Senate and House of Representatives of the United States of America in Congress assembled*, That the legislatures of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress, shall on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, in the place of such Senator so going out of office, in the following manner: Each house shall openly, by a *viva voce* vote of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for, who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house by the Clerk or Secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock, meridian, of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected Senator to represent said State in the Congress of the United

States ; but if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required by this act, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected ; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the legislature, and take at least one vote until a Senator shall be elected.

SEC. 2. *And be it further enacted*, That whenever, on the meeting of the legislature of any State a vacancy shall exist in the representation of such State in the Senate of the United States, said legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a Senator for a full term ; and if a vacancy shall happen during the session of the legislature, then on the second Tuesday after the legislature shall have been organized and shall have notice of such vacancy.

SEC. 3. *And be it further enacted*, That it shall be the duty of the Governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which shall be countersigned by the Secretary of State of the State.

Approved July 25, 1866.

Mr. Robbins moved that the message of the Governor be referred to the Committee on Printing, with authority to have it printed for the use of the Senate.

Which motion was agreed to.

On motion of Mr. Ludlam, the Senate adjourned to meet at eleven o'clock, on Tuesday morning.

TUESDAY, September 11, 1866.

At 11 o'clock the Senate met.

The Senate was opened with prayer by Rev. Mr. Symmes.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Acton, Blackman, Buckley, Cobb, Dater, Doughty, Grier, Horner, Kennedy, Little, Ludlam, Martin, Reeves, Richey, Robins, Scovel (President), Trusdell, Ware, Winfield, Wright, Wurts—21.

The journal of the proceedings of yesterday was read and approved.

The President called Hon. Mr. Horner to the Chair.

Mr. Scovel asked and obtained leave to introduce

Senate Joint Resolution, No. 1, entitled,

Joint Resolution ratifying the Amendment to the Constitution of the United States.

Which was read for the first time by its title, and on motion of Mr. Scovel, was ordered to have a second reading, without reference.

On motion of Mr. Scovel, so much of the rules of the Senate as prohibits the reading of a bill or joint resolution more than once on the same day, was suspended, and

On motion of Mr. Scovel,

Senate Joint Resolution, No. 1, entitled,

Joint Resolution ratifying the Amendment to the Constitution of the United States,

Was read a second time, and considered by sections.

A message was received from the House of Assembly, by the hands of Mr. Cooper, their Clerk, announcing that the House of Assembly had passed

Assembly Joint Resolution, No. 1, entitled,

Joint Resolution ratifying the Amendment to the Constitution of the United States,

In which the concurrence of the Senate is requested.

[Signed,]

GEO. B. COOPER, *Clerk.*

Pending the consideration of Joint Resolution, No. 1, on a second reading,

The hour of half-past twelve having arrived,

The Senate adjourned.

AFTERNOON.

At 3 o'clock the Senate met.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Acton, Buckley, Cobb, Grier, Horner, Little, Ludlam, Martin, Reeves, Richey, Robins, Scovel (President), Ware, Winfield, Wright—15.

The message from the House of Assembly, announcing that the House of Assembly had passed

Assembly Joint Resolution, No. 1, entitled,

Joint Resolution ratifying the Amendment to the Constitution of the United States,

In which the concurrence of the Senate is requested,

Was taken up, and said Joint Resolution was read a first time by its title.

Mr. Ludlam moved that said Joint Resolution be ordered to have a second reading, without reference, and that it be substituted for Senate Joint resolution, No. 1, now under consideration.

Which motion was agreed to.

Mr. Buckley moved that so much of the rules as prohibits the reading of a bill on joint resolution more than once on the same day be suspended, and that Assembly Joint Resolution, No. 1, be now taken up on a second reading.

Which motion was agreed to.

Said Joint Resolution was then read a second time.

Mr. Little moved that the further consideration of said Joint Resolution be postponed until the next session of the Legislature.

On agreeing to which motion, the yeas and nays were ordered and taken, as follows :

In the affirmative were

Messrs. Dater, Doughty, Grier, Kennedy, Little, Martin, Robins, Trusdell, Winfield, Wurts—10

In the negative were

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Ludlam, Reeves, Richey, Scovel (President,) Ware, Wright—11.

So said motion was not agreed to.

Assembly Joint Resolution, No. 1, entitled

Joint Resolution ratifying the Amendment to the Constitution of the United States,

Having been read a second time, considered by sections, and agreed to, was ordered to have a third reading.

Mr. Buckley moved that so much of the rules as prohibits the reading of a bill or joint resolution more than once in the same day, be suspended, and that said joint resolution now have a third reading.

Which motion was agreed to.

Assembly Joint Resolution, No. 1, entitled,

Joint Resolution ratifying the Amendment to the Constitution of the United States,

Was taken up and read a third time.

Upon the question,

Shall this Assembly Joint Resolution pass?

It was decided as follows :

In the affirmative were

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Ludlam, Reeves, Richey, Scovel (President), Ware, Wright—11.

In the negative were

Messrs. Dater, Doughty, Grier, Kennedy, Little, Martin, Robins, Trusdell, Winfield, Wurts—10.

Under the direction of the President, the Secretary carried the same to the House of Assembly, and informed them that the Senate had passed the same without amendment.

Mr. Richey offered the following resolution :

Resolved, That the Senate will not, during the present session, entertain any bill in reference to any subject not embraced in, or recommended by, the message of the Governor.

Mr. Winfield moved to amend said resolution by inserting after the word "bill" the words "unless the State is directly interested therein."

On agreeing to which amendment, the yeas and nays were ordered and taken, as follows :

In the affirmative were

Messrs. Dater, Doughty, Grier, Little, Martin, Trusdell, Winfield—7.

In the negative were

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Kennedy, Ludlam, Reeves, Richey, Robins, Scovel (President), Ware, Wright, Wurts—14.

So said amendment was not agreed to.

A message was received from the House of Assembly, by the hands of Mr. Cooper, their Clerk, announcing that the House of Assembly had passed the following concurrent resolution :

Resolved, (Senate concurring,) That the Senate and General Assembly will adjourn until Monday evening, 17th instant, at 8 o'clock.

[Signed,]

G. B. COOPER, *Clerk*.

Mr. Buckley moved that the Senate do concur in the foregoing resolution from the House of Assembly.

Which motion was agreed to.

Under the direction of the President, the Secretary carried the same to the House of Assembly, and informed them that the Senate had passed the same without amendment.

On motion of Mr. Robins, the Senate adjourned until Monday, 17th instant, at 8 o'clock, P. M.

MONDAY, September 17, 1866.

At 8 o'clock, P. M., the Senate met.

The President being absent, on motion of Mr. Richey, Hon. Mr. Wurts was called to the Chair, as President *pro tempore*.

Under the direction of the President *pro tempore*, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Acton, Blackman, Buckley, Cobb, Dater, Doughty, Horner, Little, Ludlam, Martin, Reeves, Richey, Robins, Trusdell, Ware, Winfield, Wright, Wurts—18.

The journal of the proceedings of Tuesday last, was read and approved.

On motion of Mr. Ludlam, the Senate adjourned until 11 o'clock on Tuesday morning.

—o—

TUESDAY, September 18, 1866.

At 11 o'clock the Senate met.

The Senate was opened with prayer by Rev. Mr. Herr.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Acton, Blackman, Buckley, Cobb, Dater, Doughty, Grier, Horner, Kennedy, Little, Ludlam, Martin, Reeves, Richey, Robins, Scovel (President), Trusdell, Ware, Winfield, Wright, Wurts—21.

The journal of the previous day's proceedings was read and approved.

The President called Hon. Mr. Buckley to the chair, as President *pro tempore*.

Mr. Scovel offered the following resolution :

Resolved, That we now proceed, in accordance with the act of Congress, entitled "An act to regulate the times and manner of holding elections for Senators in Congress," approved July 25, 1866, to elect a Senator to fill a vacancy in the representation of this State in the Senate of the United States.

Which resolution was read.

Mr. Little presented the following protest, which, on motion of Mr. Little, was ordered to be spread upon the Journal of the Senate :

The undersigned, members of the Senate of the Legislature of the State of New Jersey, hereby protest against any attempt to elect a United States Senator at the present extra session of the Legislature—

First, Because there is no legal vacancy.

Second, Because the act of Congress, approved July 25, 1866, under which it is proposed to elect, is unconstitutional.

There is no vacancy. Mr. Stockton was elected for six years, from the 4th day of March, 1865.

The Constitution of the United States provides that the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature. The Constitution of New Jersey vests the legislative power in a Senate and General Assembly, recognizing them, however, as still the Legislature when assembled in Joint Meeting. A statute of the State prescribes that Senators shall be chosen by the Senate and General Assembly in Joint Meeting assembled. Senators have always been elected in New Jersey in Joint Meeting, and, by custom, dating before the adoption of the Constitution of the

United States, the Joint Meeting have always adopted their own rules in Joint Meeting, each meeting for itself.

The journal shows that each House separately, in the usual form, unanimously adopted a resolution to go into Joint Meeting. Every member of both Houses was personally present at the time specified in pursuance of the resolutions, and voted to establish rules for the government of the body, in conformity with the uniform practice; among others, "that no candidate should be declared elected unless upon receiving a majority of all the members elected to both houses of the Legislature." At an adjourned session, every member of the Legislature elected was present in pursuance of resolutions of the houses to that effect, for the purpose of electing a United States Senator, when the vote was taken to rescind that rule, and substitute for it a rule that any candidate receiving "a plurality of the votes of the members present shall be declared duly elected."

This rule was adopted by a majority of all the members elected, every member elected present and voting. Mr. Stockton received forty votes, no one else receiving more than thirty-seven—there being four scattering votes.

Mr. Stockton was declared elected, in the presence of the whole Legislature, not one of whom expressed any dissent. The joint meeting transacted some other business, and adjourned *sine die*. The Legislature was in session some days after the adjournment of the joint meeting, and finally adjourned for the session without one word of protest.

Mr. Stockton was duly commissioned by the Governor of the State, under the great seal of the State, as provided by the act. He presented his credentials, took the requisite oath, and became a member of the United States Senate from the State of New Jersey. A protest was presented against his right to his seat, signed by a minority of the members of the Legislature. The matter was referred to the Judiciary Committee of the Senate, composed of the most eminent lawyers and jurists of our country, five out of seven of whom were Mr. Stockton's political opponents. The Committee, after examining the question with great care, and hearing arguments on both sides, made a written report, in which they declared that the election was valid; that the sitting member was duly chosen for six years from the 4th of March, and reported a resolution to that effect. The Senate of the United States, acting judicially under the clause of the Constitution which makes it the judge of the qualifications, elections and returns of its own members, rejected a resolution offered as an amendment to the resolution reported by the Committee, declaring the election

invalid, and, by a majority of one, *decided that Mr. Stockton was duly elected and entitled to his seat.*

The Constitution of the United States declares that each Senator *shall have* one vote, and that the Senate shall be the judge of the election of its own members. On the vote adopting the resolution, Mr. Stockton voted, as he had done on every question since he had been in the Senate. He was one of the *constitutional judges* of the Senatorial election from New Jersey, and, in our opinion, had no right to withhold his vote when it became necessary to defend the interests of his State. He was at least a Senator *de facto*.

The judicial question was decided. The judges all voted as they were required to do by the Constitution. The court exhausted its power. *It adjudged that Mr. Stockton was legally elected, and entitled to his seat for six years from the 4th of March, 1865.* The question was a *judicial*, not a *legislative* one, it was decided. There was no appeal, for the body which had decided were the *constitutional judges*. Their decision was final and irrevocable. If the vote cast by Mr. Stockton was illegal, every act of Congress, passed by that vote might have been reconsidered with much more propriety than the Senatorial question, for in the latter case alone the Senate sat as a court and acted judicially. The Constitution of the United States declares that "each Senator *shall have* one vote," also, that "each House *shall be* the judge of the election of its own members." When the Senate passed a resolution depriving a Senator of his vote while he yet retained his seat, and after a resolution declaring that he was not entitled to his seat had been rejected by a majority, (without his vote,) their action was clearly unconstitutional. New Jersey was deprived of a vote on a question of vital importance to her interests, in direct disregard of the plain words of the Constitution.

The act of July 25, 1866, is unconstitutional.

The first clause of the fourth section of the first article of the Constitution of the United States, is as follows: "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law, make or alter such regulations, except as to the place of choosing Senators."

It is well known that this clause of the Constitution was assailed in the State Conventions, on the ground that Congress might contrive the manner of holding elections so as to exclude all but their own favorites from office.

The Conventions of the States of Virginia, Massachusetts, New Hampshire, New York, Rhode Island and South Carolina accompanied their ratification of the Constitution with a solemn protest

against the power of Congress over the election. They prepared amendments to the Constitution calculated to carry out their views, and recorded on their journals perpetual instructions to their representatives in Congress to urge earnestly and zealously their adoption, and to refrain from the exercise of any power inconsistent with the principles of the proposed amendment.

Notwithstanding this, after the expulsion of a Senator from New Jersey, duly elected, and the adjournment of the Legislature of the State without an election, a Senator from New Hampshire, one of the States which had given perpetual instructions to their Senators to oppose all exercise of power in Congress over the elections, introduced an act entitled "An act to regulate the times and manner of holding elections for Senators in Congress," which act was approved July 25, 1866.

We consider this act unconstitutional. Although the argument urged in the Senate of the United States against the validity of Mr. Stockton's election was, that *forty* members, not being a majority of the whole, could not elect even under a previous resolution *passed by a majority* of all the members elected, to the effect that a plurality should elect; and although by the New Jersey protest against the validity of his election, it was insisted that the Constitution of the United States required a direct vote of a majority of all the members to constitute an election, yet this act of Congress puts it in the power of *twenty-one* members in a Legislature composed of *eighty-one*, to elect a Senator! If these insinuations were valid, the Constitution has been changed by act of Congress, or else the act is unconstitutional. If not valid, then Mr. Stockton was duly elected, and no vacancy now exists to be filled by the present Legislature.

But the act of Congress, in its provisions which *compel* the "members of the two houses" to convene in joint assembly for the election of a Senator, without their agreement to do so, and authorize an election by a majority of that assembly, composed, as it may be, of a bare majority of the members elected to both houses, we hold to be unconstitutional.

Applying these provisions to the Legislature of New Jersey—composed of two houses, one of *sixty* and the other of *twenty-one* members—it is obvious that a Senator may be elected, not only without the consent of either house to go into a joint assembly, and when one, or even both houses have refused to do so, but by a bare majority of a majority of the whole, *not one of whom need be a member of the upper house.*

Suppose, at the time appointed for separate action, either house, or both, should not only "fail to take proceedings" to elect sep-

arately, but should also fail or even refuse to pass a resolution to go into joint assembly, at noon, of the next day, any forty-one members of both houses may voluntarily get together and elect a Senator by a bare majority of those assembled, all of whom may be members of the lower house. Such an assembly would, in no sense be a *joint assembly*, much less the *Legislature*, composed of two houses. Is it insisted that if it is not a *joint assembly* it cannot elect? and the act therefore will not bear this construction, then it must be admitted that the different provisions of the act are inconsistent with one another, for it requires only a majority of all the members of *both* Houses to be present and voting to make a valid election. But if it be admitted that a portion of the Senate must be present to make a *joint assembly*, still two Senators and thirty-nine members may elect without *the Senate* being present. And this has been held unconstitutional by the Senate of the United States, and admitted by the arguments in that body in all the contested cases which have been considered. The question has been always on this point: Were both Houses present? It has never been suggested before that an election could take place in the absence of either.

The Constitution of the United States requires Senators to be elected by the Legislatures of the several States, simply giving to Congress the power to prescribe the *time and manner* of their election.

This power is limited to mere form. The substance, the right of election, and the power of election remain to the Legislatures, and cannot be taken away or impaired. Congress cannot change the organism of the Legislatures by *compelling* a joint action of the two houses. This would not only destroy their right of separate action, but the power of separate deliberation. Much less can it prescribe a mode of proceeding which might give the whole power of election to the majority of a fraction of one house.

The Constitutional ability of electing Senators by a Joint Meeting of the two houses has always been questioned, and can only be reconciled to principle, if at all, by their separate agreement to so elect. Its best justification, perhaps its only one, is to be found in long usage. But the power to *coerce* joint action has never been claimed until now. The structure of State Legislatures, the right of the States to make and alter their own Constitutions vesting their legislative powers in one or two houses, belongs to the States, and cannot be interfered with by Congress, so long as they adhere to a "republican form of government."

The Constitution of New Jersey vests the legislative power of the State in two houses—"a Senate and General Assembly."

These are the Legislature of New Jersey, and, by the plainest provisions of the Constitution, separate action is enjoined upon them. Can Congress under the formal power of prescribing the *manner* of election, dissolve this Constitutional injunction of deliberative separate action of both houses, by coercing them into a joint assembly, where the voice of one may be silenced, and a fraction of the other elect? If so, the reserved sovereignty of States, intended to be specially represented in the Senate, is a mockery.

For these and other reasons, we deny the right of the present Legislature to choose a Senator at all, and hereby enter our solemn protest against all proceedings intended to attain that end as unconstitutional, invalid, insulting to the dignity and character of our State, and the independence of her Legislature.

TRENTON, September 18, 1866.

AMOS ROBBINS,

C. H. WINFIELD,

J. DOUGHTY,

JOSEPH S. MARTIN,

A. WURTS,

H. S. LITTLE,

JOHN G. TRUSDPELL,

JOHN Y. DATER,

PH. H. GRIER.

Mr. Scovel moved that the resolution offered by him be adopted.

On agreeing to which motion the yeas and nays were ordered, and taken, as follows :

In the affirmative, were

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Ludlam, Reeves, Richey, Scovel, (President,) Ware, Wright—11.

In the negative, were

Messrs. Dater, Doughty, Grier, Kennedy, Little, Martin, Robins, Trusdell, Winfield, Wurts—10.

So said motion was agreed to.

The Senate then, in accordance with the act of Congress ap-

proved July 25, 1866, and the resolution of Mr. Scovel, proceeded to vote for United States Senator.

Upon calling the roll of the Senate, the following Senators voted, *viva voce*, for Alexander G. Cattell, of Camden county, viz.:

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Ludlam, Reeves, Richey, Scovel, (President,) Ware, Wright—11.

No other person was named or voted for, and Alexander G. Cattell received a majority of the whole number of votes of the Senate as Senator in Congress from New Jersey, and he was declared to be, on the part of the Senate, duly named and elected United States Senator from this State.

Mr. Horner offered the following resolution, and moved that it be adopted :

Resolved, (House of Assembly concurring,) That the two houses of this Legislature convene in joint meeting, in the Assembly Chamber, on Wednesday, the 19th instant, at 12 o'clock, noon, pursuant to the law to regulate the times and manner of holding elections for Senators in Congress.

On agreeing to which motion the yeas and nays were ordered, and taken, as follows :

In the affirmative, were

Messrs. Acton, Blackman, Buckley, Cobb, Horner, Ludlam, Reeves, Richey, Scovel, (President,) Ware, Wright—11.

In the negative, were

Messrs. Dater, Doughty, Grier, Kennedy, Little, Martin, Robins, Trusdell, Winfield, Wurts—10.

So said motion was agreed to.

On motion of Mr. Buckley, the Senate adjourned until eleven o'clock on Wednesday morning.

WEDNESDAY, September 19th, 1866.

At 11 o'clock, A. M., the Senate met.

The Senate was opened with prayer by Rev. Mr. Herr.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call :

Messrs, Acton, Blackman, Buckley, Cobb, Dater, Doughty, Grier, Horner, Kennedy, Little, Ludlam, Martin, Reeves, Richey, Robins, Scovel, (President,) Ware, Winfield, Wright, Wurts—20.

The journal of the previous day's proceedings was read and approved.

On motion of Mr. Buckley, it was

Resolved, That the journal of the proceedings of the Senate, during this extra session, be referred to the Committee on Printing, with power to have the said proceedings printed.

Mr. Acton called up a resolution offered by Mr. Richey, on the 11th instant, and laid upon the table, which was read, as follows :

Resolved, That the Senate will not, during the present session, entertain any bill in reference to any subject, not embraced in, or recommended by the message of the Governor.

Mr. Acton moved that said resolution be adopted.

On agreeing to which motion the yeas and nays were ordered, and taken, as follows :

In the affirmative, were

Messrs. Acton, Buckley, Cobb, Doughty, Kennedy, Little, Ludlam, Richey, Wright, Wurts—10.

In the negative, were

Messrs. Blackman, Dater, Grier, Horner, Martin, Robins, Scovel,
(President,) Ware, Winfield—9:

So said motion was agreed to.

A message was received from the House of Assembly by the hands of their Clerk, announcing that the House of Assembly had concurred in the following concurrent resolution from the Senate :

Resolved, (House of Assembly concurring,) That the two houses of this Legislature convene in joint meeting, in the Assembly Chamber, on Wednesday, the 19th instant, at twelve o'clock, noon, pursuant to the law to regulate the times and manner of holding elections for Senators in Congress.

Mr. Buckley offered the following resolution :

Resolved, That the compensation of the officers of the Senate or their services during the present session be referred to the Committee on Finance.

Which resolution, on motion of Mr. Buckley, was adopted.

Mr. Cobb, from the Committee on Finance, reported a resolution that there be paid to each of the officers of the Senate three dollars per day, from the commencement to the close of the session, and to each of the pages of the Senate, one dollar and fifty cents per day for the like time.

Which resolution, on motion of Mr. Cobb, was agreed to.

A message was received from the House of Assembly, by the hands of their Clerk, announcing that the House of Assembly had passed the following concurrent resolution :

Resolved by the Senate and General Assembly of the State of New Jersey, That the Treasurer of this State be authorized to pay to the officers of each House, for their services during the present session of the Legislature, at the rate of three dollars per day, from the commencement to the closing thereof; and to the pages of each house, severally, a compensation for their services during the present session, from the commencement to the closing thereof, equal, in proportion, to the compensation they received

for their services for a like time, at the first or regular session of this Legislature.

In which the concurrence of the Senate is requested.

[Signed,]

GEO. B. COOPER, *Clerk.*

Mr. Cobb moved that the Senate reconsider the vote by which the Senate adopted the report of the Committee on Finance on the subject of the compensation of the officers of the Senate; and also the resolution referring the subject to the said committee.

Which motion was agreed to.

On motion of Mr. Wurts, said resolution and report were ordered to lie upon the table.

The concurrent resolution from the House of Assembly was then taken up, and

On motion of Mr. Robins, the Senate concurred in the same.

Under the direction of the President, the Secretary carried the same to the House of Assembly, and informed them that the Senate had passed the same without amendment.

A message was received from the House of Assembly, by the hands of their Clerk, that the House of Assembly "is now ready to go into Joint Meeting, and await the presence of the Senate in the Assembly Chamber."

Mr. Buckley moved that the Senate do now take a recess for the purpose of going into Joint Meeting.

Which motion was agreed to.

The Senate then proceeded to the Assembly Chamber, and after some time spent in Joint Assembly, returned to the Senate Chamber.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Acton, Blackman, Buckley, Cobb, Dater, Doughty, Grier, Horner, Little, Martin, Reeves, Richey, Scovel, (President,) Ware, Winfield, Wright, Wurts—17.

On motion of Mr. Horner,

Resolved, (House of Assembly concurring,) That this Legislature will adjourn *sine die*, at one o'clock, P. M., this 19th instant.

Under the direction of the President, the Secretary carried the same to the House of Assembly, and informed them that the Senate had passed the same, and requested their concurrence.

A message was received from the House of Assembly by the hands of their Clerk, announcing that the House of Assembly had passed the following resolution, in which the concurrence of the Senate is requested:

Resolved, (Senate concurring) That a committee of three of the House and two of the Senate be appointed to call upon the Governor and inform him that the Senate and Assembly are now ready to adjourn provided he has no business to present to them.

Mr. Robins moved that the Senate do concur in said resolution.

Which motion was agreed to, and the President appointed Messrs. Robins and Ludlam as said committee on the part of the Senate.

Under the direction of the President, the Secretary informed the House of Assembly that the Senate had concurred in said resolution, and had appointed Messrs. Robins and Ludlam as said committee on the part of the Senate.

A message was received, from the House of Assembly by the hands of their Clerk, that the House of Assembly had concurred in the resolution from the Senate, that this Legislature will adjourn *sine die*, at 1 o'clock P. M., this 19th instant.

Mr. Robins, from the committee to wait upon the Governor, reported that the committee had discharged that duty, and that the Governor had no further communication to make to the Legislature.

At one o'clock, P. M., the members of the House of Assembly, preceded by their Speaker and Clerk, entered the Senate Chamber, and announced that they had concluded their labors, and adjourned *sine die*.

Whereupon, on motion of Mr. Robins, the Senate adjourned *sine die*, and the hour having arrived at which both houses, by concurrent resolution, had agreed that the Legislature should adjourn, the President of the Senate pronounced the Legislature adjourned, *without day*.

Attest:

E. R. BORDEN,
Secretary of the Senate.

MINUTES
OF THE
JOINT ASSEMBLY
OF THE
SENATE & GENERAL ASSEMBLY,
HELD ON THE 19th OF SEPTEMBER, 1866.

JOINT ASSEMBLY.

STATE OF NEW JERSEY,
ASSEMBLY CHAMBER,
TRENTON, Wednesday, September 19, 1866. }

This day, at 12 o'clock, noon, the Senate and General Assembly met, in Joint Assembly, in the Assembly Chamber.

The Joint Assembly was called to order by Hon. John Hill, Speaker of the General Assembly.

Mr. Buckley moved that Hon. James M. Scovel, President of the Senate, be the Chairman of the Joint Assembly.

Which motion was unanimously agreed to.

Under the direction of the President, the Secretary called the Joint Assembly, when the following members of the Senate and General Assembly appeared and answered to the call:

Messrs. Acton, J. F. Anderson, Ayres, Beesley, Blackman, Blauvelt, Bodwell, Buckley, Clark, Coates, Cobb, Cole, Condit, Crozer, Custis, Dickeson, Edwards, Falkenbury, Fisher, Fort, Garrison, Green, Hays, Hill, Horner, Jarrard, Lathrop, Ludlam, Moore, Morris, Murphy, Nicholson, Nixon, Ramsey, Reeves, Richey, Staats, Scovel, Tyrell, Van Wagoner, Ware, W. D. Wilson, Wolseiffer, Wright
—44.

Under the direction of the Chairman of the Joint Assembly, the journal of the proceedings of the Senate, on Tuesday, the 18th instant, was read by the Secretary of the Senate, and the Minutes of the votes and proceedings of the General Assembly, on the same day, were read by the Clerk of the General Assembly.

It appearing by the Journal of the Senate and by the Minutes of the votes and proceedings of the General Assembly, that in accordance with the Act of Congress entitled "an act to regulate

the times and manner of holding elections for Senators in Congress," approved July 25, 1866, did, on the second Tuesday after their meeting and organization, proceed to name a person to represent this State in the Senate of the United States, to fill the existing vacancy in the representation from this State; and that in each house, a majority of all the members elected to such house did, by a *viva voce* vote, name Alexander G. Cattell, as Senator in Congress from this State, to fill the existing vacancy.

Mr. Ludlam offered the following resolution :

Resolved, That the Legislature of New Jersey, in joint meeting assembled, hereby declare Alexander G. Cattell duly elected Senator to represent this State in the Congress of the United States to fill the existing vacancy, and that the Secretary of this Joint Assembly be directed to certify these proceedings to the Governor of the State.

Mr. Ludlam moved that the foregoing resolution be adopted.

On agreeing to which motion, the yeas and nays were ordered, and taken as follows :

In the affirmative were,

Messrs. Acton, J. F. Anderson, Ayres, Beesley, Blackman, Blauvelt, Bodwell, Buckley, Clark, Coates, Cobb, Cole, Condit, Crozer, Custis, Dickeson, Edwards, Falkenbury, Fisher, Fort, Garrison, Green, Hays, Hill, Horner, Jarrard, Lathrop, Ludlam, Moore, Morris, Murphy, Nicholson, Nixon, Ramsey, Reeves, Richey, Staats, Scovel, Tyrell, Van Wag-
oner, Ware, W. D. Wilson, Wolseiffer, Wright—44.

In the negative, none.

So said motion was agreed to.

The result of the vote being stated, the Chairman of the Joint Assembly declared Alexander G. Cattell duly elected as a Senator of the United States, from this State, to fill the existing vacancy; a majority of all the members elected to each house having named and elected him.

On motion of Mr. Buckley, the Joint Assembly then arose.

Attest :

E. R. BORDEN,
Secretary of the Joint Assembly.