

Mr. Cottrell moved as an amendment that it be made the special order for Saturday, January 30, at 12 o'clock.

On the question of the adoption of the amendment, the yeas and nays were called with the following result:

Those voting in the affirmative were—

Mr. President, Messrs. Brantley, Cottrell, Crawford, Fortner, Hendry, Knight, Lykes, McAuley, McKinnon, Oliveros, and Smith—12.

Those voting in the negative were—

Messrs. Dennis, Durkee, Hill, Howell, Johnson, Long, Meacham, Osgood, Parlin, Pope, Sturtevant, and Wallace—12.

So the amendment was not adopted.

On the motion of Mr. Dennis to make it the special order for to-morrow at half-past 10 o'clock, the yeas and nays were called with the following result:

Those voting in the affirmative were—

Mr. President, Messrs. Brantley, Cottrell, Crawford, Dennis, Durkee, Fortner, Hendry, Hill, Howell, Johnson, Knight, Long, Lykes, McAuley, Meacham, Oliveros, Osgood, Parlin, Pope, Sturtevant, and Wallace—22.

Those voting in the negative were—None.

So the resolution was made the special order for to-morrow at half-past 10 o'clock.

Mr. Johnson moved that the Senate adjourn until to-morrow at 10 o'clock;

Which was agreed to, and the President declared the Senate adjourned accordingly.

WEDNESDAY, JANUARY 27, 1875.

The Senate met pursuant to adjournment.

The President *pro tem.* in the chair.

The roll was called and the following Senators answered to their names:

Mr. President, Messrs. Brantley, Cottrell, Crawford, Fortner, Hendry, Hill, Howell, Johnson, Knight, Long, Lykes, McAuley, McKinnon, Meacham, Oliveros, Osgood, Parlin, Pope, Smith, Sturtevant, and Wallace—22.

A quorum present.

Prayer by the Chaplain.

Mr. Meacham moved that the reading of the Journal be dispensed with;

Which was agreed to, and the Journal was amended and approved.

Mr. Durkee introduced the petition of Mary W. Garnie, widow of Isadore V. Garnie, deceased;

Which was received and placed among the orders of the day.

Mr. Durkee introduced a petition for the appointment of Bishop Verot as Trustee of Schools, &c.;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Lykes introduced Senate Bill No. 18;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Brantley introduced Senate Bill No. 19;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. McKinnon introduced Senate Bill No. 20;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Oliveros introduced Senate Bill No. 21;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Durkee introduced Senate Bill No. 22;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Durkee introduced Senate Bill No. 23;

Which was received and placed among the orders of the day.

Under a suspension of the rule Mr. Durkee introduced Senate Bill No. 24;

Which was received and placed among the orders of the day.

Mr. Dennis offered the following resolution, which was received and read:

Resolved, That it is hereby agreed by the Senate, and by each and every member thereof, that the opinion of the Attorney-General upon contested election cases, this day received, be, and is hereby, made the law governing the Senate during the term of this Legislature, and that no further effort shall be made to unseat any member of the Senate during the existence of this Legislature; and the President *pro tem.* of this Senate is hereby directed to rule every and all motions tending or looking directly or indirectly to vacating or unseating any member of the Senate of this Legislature, out of order; and this resolution shall supersede and make void any rule of the Senate governing or appertaining to any cases to which this resolution refers; that is to say, that it is the intention of this resolution to maintain the organization of this Senate as now organized, and retain each and every member of the Senate now occupying a seat therein in his seat, as a member of this Senate, until this Senate shall expire by the expiration of this Legislature, in the year 1876.

Mr. Dennis moved a suspension of the rule, that the opinion of the Attorney-General, called for yesterday, be read;

Which was agreed to.

The Secretary then read the following opinion of the Attorney-General:

ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, Fla., January 27, 1875.

To the Hon. A. L. McCaskill, President pro tem. of the Senate:

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, asking my official opinion as to whether there is any law now in force governing contested election cases in this State.

I have carefully examined the statutes in reference to elections, and I am of opinion that there is a law in this State governing contested elections; and that law is in Thompson's Digest, page 78, section 10.

There have been several statutes passed by the Legislature of this State in relation to elections, but only two bearing upon the subject of contested elections. The first is the act of 1845, found in Thompson's Digest, cited *supra*; the other was passed in December, 1862, Acts of Florida, chapter 1,338, page 22.

The act of 1862 contains a proviso in relation to contested elections, but as the statute to which it applies is repealed the proviso is also repealed.

When the statute of 1862 was passed, it recognized the act of 1845 as being the law of this State in relation to contested elections, as is evident by the fourth section of said act which refers to paragraph number one, section eight of said statute.

The general election law of August the 6th, 1868, is silent upon the subject of contested elections. This act was amended February 19th, 1870, and also on the 27th of February, 1872. Neither amendments have any reference to the subject of contested elections. Their silence induces me to think that the Legislature acquiesced in the law as it stands in Thompson's Digest, as referred to above.

In 1861 there was an act passed in relation to elections. This act refers to the act of January 6th, 1,853, chapter 1,287, page 34. It is full and explicit on the subject of elections, but is also silent on the subject of contested elections.

The act of 1853, "entitled An act to Amend and Simplify the Election-Laws, now in Force in this State," published in the Acts of 1852, chapter 543, page 118, has no reference to the act of 1845, on contested elections.

The act of 1853 is the succeeding one to that of 1845; and I have traced back legislation on this subject to that date, and find the act of 1845 not only unrepealed, but recognized by Article XV., section 2, of the Constitution of 1868, which pro-

vides "that all acts and resolutions of the General Assembly, and all official acts of the civil officers of the State not inconsistent with the provisions of the Constitution and statutes of the United States, or with this Constitution, or with any ordinance or resolution adopted by this Convention, and which have not been, and are not by this Constitution annulled, are in force, and shall be considered and esteemed as the laws of the State, until such acts or resolutions shall be repealed by the Legislature of the State or this Convention."

Having traced the law, as it now exists, to its source, it is interesting and instructive to ascertain its provisions on the subject of contested elections.

Section 10, paragraphs 1, 2, 3, 4, relate to the contesting on the part of Assemblymen; as to notices; taking of depositions; summons for witnesses; what to be done with the depositions, &c.

The fifth paragraph relates to contested elections before the Senate.

Upon an examination of the election laws passed since the adoption of the Constitution of 1868, to wit., the acts of August the 6th, 1868, pp. 1, 9, of February 19, 1870, p. 33, and of the 27th of February, 1872, p. 19, I find that the alteration of the act of 1845 as to Senators, consists in the change from the canvass by the Secretary of State to the State Canvassing Board, as established by the act of the 27th of February, 1872.

But the *modus operandi* of conducting the contest is unchanged; and in reference to the Assemblymen, from the canvass by the Judge of Probate to the same Board of State Canvassers, the notice, which is an essential element in the validity of a contested election, being within ten days after the canvass for an Assemblyman, and twenty-five days for a Senator, which notice, in either case, must express the points on which the election will be contested, and when and where the testimony will be taken, and before whom.

The Constitution of this State says that "each House shall judge of the qualifications, elections, and returns of its own members." This is to be understood in its full force and effect, yet it does not impinge upon the power of the legislative department in prescribing, under the Constitution, the laws regulating the exercise of the elective franchise, and the manner in which rival candidates for legislative honors shall present their claims to the seats for which they were aspirants, in order that each House may judge of the qualifications, elections, and returns of its members, according to the Constitution and laws under which the election is contested.

The Constitution of the United States contains a similar clause in relation to the elections, returns, and qualifications of members of the Senate of the United States and of the House of

Representatives. In every contested election before the House of Representatives the laws regulating the elective franchise of the State from which the contest arose, has been observed and followed with a uniformity that admits of no exception, showing thereby that laws regulating the mode of conducting elections and all contests arising therefrom are not considered as repugnant to the constitutional power of each House to judge of the qualifications of its members to their seats.

I have the honor to be, most respectfully, your obedient servant,

WILLIAM ARCHER COCKE,
Attorney-General State of Florida.

Mr. Johnson moved that the opinion be referred to the Committee on Privileges and Elections;

Which was agreed to.

Senator Johnson moved that the consideration of the special order for to-day at half-past 10 o'clock be postponed for thirty minutes.

Mr. Cottrell moved that the vote taken yesterday on the special order be reconsidered.

Mr. Johnson moved that the special order be postponed until to-morrow at half-past 10 o'clock;

Which was agreed to.

Mr. Dennis moved that the resolution offered by him lie over until quarter-past 10 o'clock to-morrow;

Which was agreed to.

Mr. Dennis asked leave to introduce a resolution.

Objection being made, Mr. Meacham moved the suspension of the rule to enable Mr. Dennis to do so.

Pending which motion the following message was received from the Assembly:

ASSEMBLY HALL,
TALLAHASSEE, Fla., January 27, 1875.

Hon. A. L. McCaskill, President pro tem. of the Senate:

SIR: I am directed by the Assembly to inform the Senate that the Assembly has adopted "a joint resolution relative to the liability of the State for certain bonds."

Very respectfully,

H. S. HARMON,
Chief Clerk.

The message was received and the accompanying joint resolution placed among the orders of the day for to-morrow.

Mr. Dennis withdrew his resolution.

ORDERS OF THE DAY.

The petition in favor of appointing Bishop Verot School Trustee, &c., was taken up and referred to the Committee on Education.

The petition of Mary Garnie was taken up and referred to the Committee on Claims.

Senate Bill No. 18 :

A bill to be entitled an act to alter and amend Section 11 of Chapter 1,976 of the Laws of Florida, entitled An act for the Assessment and Collection of Revenue, approved February 7, 1874.

Was taken up, read the first time by its title, and referred to the Committee on Finance and Taxation.

Senate Bill No. 19 :

A bill to be entitled an act to amend an act entitled An act for the Encouragement of Immigration to this State, and to Encourage the Planting and Raising of Tropical Fruits,

Was taken up, read the first time by its title, and referred to the Committee on Agriculture.

Senate Bill No. 20 :

A bill to be entitled An act for the Relief of the Sureties of D. Brownell, Collector of Revenue for Holmes County,

Was taken up, read the first time by its title, and referred to the Committee on Claims.

Senate Bill No. 21 :

A bill to be entitled An act to More Particularly Define the Boundary Line of St. Johns County,

Was taken up, read the first time by its title, and referred to the Committee on City and County Organizations.

Senate Bill No. 22 :

A bill to be entitled An act for the Relief of the Estate and Sureties of I. V. Garnie, deceased,

Was taken up, read the first time by its title, and referred to the Committee on Claims.

Senate Bill No. 23 :

A bill to be entitled An act to Provide for the Incorporation of the Sisters of St. Joseph,

Was taken up, read the first time by its title, and referred to the Committee on Corporations.

Senate Bill No. 24 :

A bill to be entitled An act Granting Certain Privileges to the Monerief Spring Company,

Was taken up, read the first time by its title, and referred to the Committee on City and County Organizations.

Assembly concurrent resolution, relative to the appointment of a joint select committee on census, &c., was taken up.

Mr. Cottrell moved the postponement of said resolution, and that it be placed among the orders of the day to-morrow ;

Which was agreed to.

Assembly concurrent resolution, relative to inspection of State Prison, &c., was taken up and read.

Mr. Wallace offered the following amendment:

And that said committee shall not be accompanied by the Warden of said prison while making their inspection among the prisoners.

Mr. McKinnon offered the following as an amendment to the amendment:

Provided nothing herein contained shall be so construed as to violate the rules and regulations of the prison.

On the adoption of the amendment to the amendment, the ayes and nays were called with the following result:

Those voting in the affirmative were—

Mr. President, Messrs. Brantley, Cottrell, Crawford, Durkee, Fortner, Hendry, Hill, Knight, McAuley, McKinnon, Meacham, Oliveros, and Pope—14.

Those voting in the negative were—

Messrs. Howell, Long, Osgood, Parlin, Smith, Sturtevant, and Wallace—7.

So the amendment to the amendment was adopted.

The question then recurred upon the adoption of the amendment as amended, and was determined in the affirmative.

The resolution as amended was then adopted.

Mr. McKinnon moved that the Senate meet the Assembly at 12 o'clock in joint session to ballot for United States Senator to fill the vacancy which will occur on the expiration of the term of Hon. Abijah Gilbert, on the 4th of March, 1875, and that a committee of two be appointed to inform the Assembly of the action of the Senate;

Which was agreed to, and the Chair appointed as said committee Messrs. Cottrell and Osgood.

Mr. McKinnon moved that the Senate take a recess of four minutes;

Which was agreed to, and the President declared the Senate adjourned for four minutes.

ONE MINUTE TO TWELVE.

The Senate resumed its session.

The committee appointed to inform the Assembly of the action of the Senate returned and reported their duty performed and were discharged.

The Senate then proceeded to the Assembly Hall to meet the Assembly in joint session.

JOINT SESSION.

The President of the Senate ordered the Secretary to call the roll of the Senate.

The roll was called and the following Senators answered to their names:

Mr. President, Messrs. Brantley, Cottrell, Crawford, Dennis, Durkee, Fortner, Hendry, Hill, Howell, Johnson, Knight, Long, Lykes, McAuley, McKinnon, Meacham, Oliveros, Osgood, Parlin, Pope, Smith, Sturtevant, and Wallace—24.

The Speaker of the Assembly ordered the Chief Clerk to call the roll of the Assembly.

The roll was called and the following members answered to their names :

Mr. Speaker, Messrs. Armstrong, Avery, Bass, Berry, Browne, Bryan, Carter, Chadwick, Coleman, Corley, Dennis, Duncan, Ferrell, Fisher, Frisbee, Gass, Gillis, Grant, Harris, Hagan, Hicks, Hill, Jackson, Jones of Escambia, Jones of Bradford, Jones of Levy, Judge, Lee, Livingston, Martin, McAlpin, McGuire, Mitchell, Morehead, Montgomery, Nixon, Orman, Petty, Pons, Proctor, Purman, Roberts, Russell, Small, Stanfill, Sutton, Tilghman, Thompson, Tucker, Washington, Wilson, and Witherspoon—53.

The President *pro tem.* of the Senate ordered the Secretary to read that portion of the Senate Journal of yesterday which related to the ballot for United States Senator ;

Which was done.

The Speaker of the Assembly ordered the Chief Clerk to read that portion of the Assembly Journal of yesterday which referred to the ballot for United States Senator ;

Which was done.

No candidate having received a majority of the votes cast, the President declared that there was no election.

Mr. Meacham moved that the Legislature now proceed to ballot for a United States Senator ;

Which was agreed to.

The roll of the General Assembly was then called with the following result :

For D. S. Walker—Messrs. McCaskill, McKinnon, Smith, Berry, Bryan, Duncan, Ferrell, Gillis, Jones of Levy, and Stanfill—10.

For Wilkinson Call—Messrs. Brantley, Cottrell, Knight, Oliveros, Carter, Frisbee, Hagan, Jackson, Jones of Bradford, and Russell—10.

For J. L. F. Cottrell—Messrs. Crawford and McGuire—2.

For J. A. Henderson—Messrs. Fortner, Hendry, Sturtevant, Lykes, and Roberts—5.

For Harrison Reed—Mr. Osgood—1.

For Samuel Walker—Messrs. Hill of Gadsden, Long, Meacham, Wallace, Avery, Coleman, Thompson, and Tucker—8.

For Samuel Petty—Messrs. Pope, Dennis of Jackson, Frisbee, Harris, Livingston, Morehead, Nixon, Proctor, Purman, Small, Tilghman, and Wilson—12.

For Abijah Gilbert—Messrs. Dennis of Alachua, Durkee, Howell, and Parlin—4.

For George P. Raney—Mr. McAuley—1.

For Horatio Bisbee, Jr.—Messrs. Johnson, Armstrong, and Martin—3.

For E. Hopkins—Messrs. Hannah, Hill of La Fayette, Sutton, and Wilson—4.

For D. M. McAlpin—Mr. Bass—1.

For William Curry—Mr. Brown—1.

For J. H. Goss—Mr. Chadwick—1.

For Robert Bullock—Messrs. Corley, Jones of Escambia, and Judge—3.

For J. T. Walls—Messrs. Gass, Petty, and Washington—3.

For Joseph E. Lee—Mr. Grant—1.

For D. L. Yulee—Mr. Hicks—1.

For Alfred Grant—Mr. Lee—1.

For Thomas Hannah—Mr. McAlpin—1.

For C. W. Jones—Messrs. Mitchell and Orman—2.

For Sherman Conant—Mr. Montgomery—1.

For D. H. McKinnon—Mr. Pons—1.

No candidate having received a majority of the votes cast, the President declared that there was no election.

Mr. Dennis moved that the joint session of the Legislature adjourn until to-morrow at 12 o'clock;

Which was not agreed to.

Mr. Hicks moved that the General Assembly proceed to take another ballot for United States Senator;

Which was agreed to.

The roll of the General Assembly was then called with the following result:

For J. A. Henderson—Messrs. McCaskill and Sturtevant—2.

For A. L. McCaskill—Messrs. Crawford, McKinnon, and Jones of Escambia—3.

For George P. Raney—Mr. Fortner—1.

For Samuel Walker—Messrs. Hill of Gadsden, Long, Wallace, Avery, Coleman, and Fisher—6.

For Robert Bullock—Messrs. Brantley, Cottrell, Hendry, Knight, McAuley, Carter, Corley, Jones of Bradford, and Judge—9.

For Abijah Gilbert—Messrs. Dennis of Alachua, Durkee, and Parlin—3.

For S. B. McLin—Messrs. Howell, Johnson, Chadwick, Hill of La Fayette, and Tucker—5.

For T. W. Brevard—Mr. Lykes—1.

For Horatio Bisbee, Jr.—Mr. Meacham—1.

For Wilkinson Call—Messrs. Oliveros, Hagan, Jackson, McAlpin, and Russell—5.

For J. T. Walls—Messrs. Osgood, Gass, and Washington—3.

For R. H. Dennis—Messrs. Pope, Harris, Livingston, Martin, Morehead, Nixon, Petty, Proctor, Purman, Small, Tilghman, Thompson, and Witherspoon—13.

For P. W. White—Mr. Hannah—1.

For C. B. Simmons—Messrs. Armstrong, Grant, and Lee—3.

For E. Hopkins—Messrs. Bass and Wilson—2.

For C. W. Jones—Messrs. Berry, Brown, Bryan, Hicks, Mitchell, and Stanfill—6.

For M. Martin—Mr. Dennis of Jackson—1.

For D. S. Walker—Messrs. Duncan, Ferrill, Frisbee, Gillis, and Jones of Levy—5.

For J. L. F. Cottrell—Messrs. McGuire and Sutton—2.

For Sherman Conant—Mr. Montgomery—1.

For W. J. J. Duncan—Mr. Orman—1.

For W. W. McCall—Messrs. Pons and Roberts—2.

No candidate having received a majority of the votes cast, the President declared that there was no election.

Mr. Osgood moved that the joint session of the General Assembly adjourn until to-morrow at 12 o'clock.

On this question a division was called for, which showed the matter determined in the affirmative.

The joint session was declared adjourned accordingly.

SESSION OF THE SENATE.

The Senate returned to its Chamber and proceeded with its regular business.

Mr. Johnson moved that the Senate adjourn until to-morrow morning at 10 o'clock.

On the question of adjournment a division was called for, which showed the matter determined in the affirmative.

The President declared the Senate adjourned accordingly.

THURSDAY, JANUARY 28, 1875.

The Senate met pursuant to adjournment.

The President *pro tem.* in the chair.

The roll was called and the following Senators answered to their names:

Mr. President, Messrs. Brantley, Cottrell, Crawford, Dennis, Durkee, Fortner, Hendry, Hill, Howell, Johnson, Knight, Long, Lykes, McAuley, McKinnon, Meacham, Oliveros, Osgood, Parlin, Pope, Smith, Sturtevant, and Wallace—24.

A quorum present.

Prayer by the Chaplain.

Reading of the Journal.