

Yeas—Messrs. Brantley, Cottrell, Durkee, Ferguson, Hendry, Howell, Johnson, Long, Lykes, McCaskill, McKinnon, Meacham, Orman, Patterson, Walker, Wallace, Walls and Weeks—18.

Nays—Messrs. Barnes, Hill, McMeekin, Osgood and Richard—5.

So the bill was indefinitely postponed.

Under a suspension of the rule, Mr. Meacham moved that the Escambia contest be postponed until to-morrow at half-past ten o'clock and made the special order of the day.

Mr. Barnes moved to amend as follows:

That the two reports of the Committee on Privileges and Elections, together with the paper on the table, purporting to be evidence in the case of the contested election from the 1st District, be recommitted to said committee, and that the case referred to be made the special order of the day for 10:30 o'clock to-morrow;

Which amendment was agreed to by Mr. Meacham.

So the motion to recommit was agreed to.

On motion of Mr. McCaskill, the Senate adjourned until to-morrow at 10 o'clock.

REMOVALS.

A. A. Hoyte from office of Clerk of Circuit Court, Columbia county.

John W. Tompkins from office of Sheriff, Columbia county.

W. H. Gunn from office of Clerk of Circuit Court, Liberty county.

G. M. Shepard from office of Assessor, Liberty County.

C. B. Edwards from office of Collector, Liberty county.

CONFIRMATIONS.

Robert Knickmeyer to be Collector for Franklin county.

Washington M. Ives, Jr., to be County Judge for Columbia county.

John Vanzant, Jr., to be Clerk Circuit Court for Columbia county.

John C. Henry to be Sheriff for Columbia county.

Jacob G. Ellis to be Assessor for Columbia county.

Thomas W. Getzin to be Collector for Columbia county.

M. J. Soloman to be Clerk of Circuit Court for Liberty county.

G. M. Shepard to be Assessor for Liberty county.

D. D. Howell to be Collector for Liberty county.

THURSDAY, January 25, 1877.

The Senate met pursuant to adjournment.

The President *pro tem.* in the chair.

The roll being called, the following Senators answered to their names:

Messrs. Barnes, Cottrell, Ferguson, Hendry, Hill, Johnson, Long, Lykes, McCaskill, McKinnon, McMeekin, Osgood, Patterson, Wallace; Walls and Weeks—16.

A quorum present.

Prayer by the Chaplain.

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

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

A message was received from the Governor by the hands of his private Secretary.

The hour for the special order of the day having arrived, Mr. Meacham moved that the special order be postponed for ten minutes;

Which was agreed to.

Mr. Walker, Chairman of the Committee on Privileges and Elections, made the following report:

SENATE CHAMBER,
TALLAHASSEE, FLA., January 24, 1877.)

TO THE HON. J. L. F. COTTRELL,

President pro tem. of the Senate:

SIR—Your Committee on Privileges and Elections, to whom was referred a paper purporting to be evidence in the contested election case from the First Senatorial District, and to whom also was recommitted the majority and minority reports heretofore made to the Senate in said case, beg leave to report that they have held the contest referred to under consideration for days; that after repeated delays, at the instance of the contestee, to enable him to procure testimony, they found it necessary to fix a day certain upon which the evidence should close, and Thursday, the 18th, and at 4 P. M., was the day agreed upon; that your committee then heard the arguments on both sides, by their respective counsel, and were preparing to make their report, when the respondent asked to be permitted to introduce additional testimony, which your committee declined to allow, as the case had been closed. But the minority report of the committee, which has been referred to us, has engrafted into it a portion of that rejected testimony, which should not be placed before the Senate in that irregular manner, especially as no other testimony in the case has been laid

before that body. Had your committee, however, had the evidence referred to under consideration, they would have felt bound to rule it out, because it was *ex parte* in its character, and it was taken without notice to contestant, affording him no opportunity to cross-examine or contradict the witnesses.

And what is said in reference to these may be said in reference to the paper referred to the committee by the Senate, which purports to be testimony in the case under consideration.

Your committee therefore report back the majority and minority reports, with the recommendation that the resolution attached to the former do pass.

WHITFIELD WALKER, Ch'n.
W. T. ORMAN,
G. C. BRANTLEY.

Which was read.

Mr. Walls moved that the further consideration of the subject be postponed until to-morrow morning at 10 o'clock;

Which was not agreed to.

RESOLUTION.

Resolved, That John J. McGuire is entitled to the seat as Senator from the first Senatorial District now held by Alonzo Ferguson.

Upon the question, Shall the resolution be adopted?

The vote was:

Yeas—Messrs. Barnes, Brantley, Cottrell, Hendry, Johnson, Lykes, McCaskill, McKinnon, McMeekin, Orman, Patterson, Richard, Walker and Weeks—14.

Nays—Messrs. Durkee, Hill, Howell, Long, Meacham, Osgood, Wallace and Walls—8.

So the resolution passed.

Mr. McCaskill moved that the Senate adjourn;
Which was agreed to, and the Senate adjourned.

FOUR O'CLOCK, P. M.

The Senate resumed its session.

The President *pro tem.* in the chair.

The roll being called, the following Senators answered to their names:

Messrs. Barnes, Cottrell, Durkee, Hendry, Hill, Howell, Johnson, Long, Lykes, McCaskill, McKinnon, McMeekin, Meacham, Orman, Osgood, Patterson, Richard, Walker and Weeks—14.

A quorum present.

On motion of Mr. McCaskill, the Senator-elect from the First District, Mr. John J. McQuire, came forward and was sworn in by Judge Cocke.

The following communication, with accompanying vetoed bills, from the Secretary of State, was received, and ordered to be spread upon the journal:

OFFICE SECRETARY OF STATE,
TALLAHASSEE, FLA., January 23, 1877. }

TO THE HON. NOBLE A. HULL,

President of the Senate:

SIR—In obedience to the Constitution, I have the honor of placing before the Senate the acts vetoed by the Governor after the adjournment of the last Legislature, and deposited in this office, viz: Senate bill, to be entitled an act providing for payment of Witnesses and Jurors who attend Courts to which they are summoned, whether the Court be held or not; and, Senate bill, to be entitled an act for the relief of Wm. F. Robertson, Lieutenant and Quartermaster of the State Penitentiary.

The vetoes accompany said bills.

Respectfully,

W. D. BLOXHAM,
Secretary State.

EXECUTIVE OFFICE,
TALLAHASSEE, FLA., March 4, 1875. }

Senate bill entitled "an act providing for the payment of Witnesses and Jurors who attended courts to which they are summoned, whether the courts be held or not," is not approved. This bill, by providing for the payment by the State not only of "witnesses in behalf of the State," but also of witnesses in behalf "of defendants in criminal prosecutions"—a provision without precedent under this or any other government—would more than double the already too great expense of criminal persecutions, besides opening the door to unlimited frauds. Moreover, this extraordinary provision of the bill is made retroactive without limit as to time, and would authorize the payment, by the State, of all witnesses who have ever been summoned in behalf of defendants in criminal prosecutions since the organization of the State Government

M. L. STEARNS,
Governor.

EXECUTIVE OFFICE,
TALLAHASSEE, FLA., March 4, 1875. }

Senate bill entitled "an act for the relief of William F. Rob-

ertson, Lieutenant and Quartermaster of the State Penitentiary." is not approved. As the title of this bill implies, Mr. Robertson was Lieutenant and Quartermaster of the State Penitentiary during the time specified in the bill, to-wit: From October 1, 1869, to August 22, 1870, and drew his pay as such officer. I can see, at this late day, no reason for allowing additional pay as Surgeon while he was commissioned and paid as Quartermaster, especially as this claim was disapproved by the officers under whom he served, and disallowed by the then administration, which was probably cognizant of all the facts. Moreover, the records of the Comptroller's office show that one Dr. W. J. Scull was paid for medical services, during the same time, on vouchers approved by Lieutenant Robertson in his capacity as Quartermaster.

M. L. STEARNS,
Governor.

Mr. Meacham moved that the minority report of the Committee on Privileges and Elections be spread upon the Journal.

Mr. McCaskill offered the following resolution:

That the minority report of the Committee on Privileges and Elections, in the case of McGuire against Ferguson, be spread upon the Journal, excluding the portion relating to evidence which was not taken and submitted to the committee before the case was closed.

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

That all testimony annexed to the minority report, after the 18th of January, be spread upon the Journal.

Mr. McCaskill moved to lay the amendment on the table;

Which was agreed to.

Mr. Wallace moved the indefinite postponement of the subject;

Which was not agreed to.

Mr. Meacham withdrew his motion.

Mr. Barnes moved as an amendment to the resolution offered by Mr. McCaskill, to strike out "relative to evidence," and insert "reciting the evidence;"

Which was agreed to, and the motion of Mr. McCaskill as amended adopted.

MINORITY REPORT.

TO THE HON. NOBLE A. HULL,
President of the Senate:

We, the undersigned, members of the Senate Committee on Privileges and Elections, to whom was referred the matter of the contest of John J. McGuire against A. Ferguson, to a seat

in this body from Escambia county, present the following report, and respectfully submit our arguments in behalf of Mr. Ferguson.

We do so, candidly believing there are enough Democratic Senators in this body to maintain the right, if it can be brought clearly to their minds—gentlemen who know it is not always wise to exercise admitted authority. All that is needed to keep Mr. Ferguson in his seat is, in our opinion, a frank notice of the several charges set up against him. We proceed frankly to meet the several charges preferred by Mr. McGuire as the ground of claim.

FIRST CHARGE.

Mr. McGuire says, as his first charge, that the Board of County Commissioners abolished two precincts in the county. There is proof that the Commissioners abolished the precinct at Ferry Pass. Suppose, however, we admit the abolition of two instead of one, and that they were precincts at which Democratic majorities have been given. Will any Senator undertake to deny the Commissioners had authority to abolish the precincts? And in the absence of all proof that Mr. Ferguson was in conspiracy with them in the work, with what propriety can he be held responsible for it? Their wrong is not necessarily his wrong.

SECOND CHARGE.

The second specification is a charge of fraud in the registration of electors. The Senate will certainly see that as a specification it is without date or name of perpetrator. It is so vague and indefinite that defense to it would be impossible. No wonder it utterly failed of proof.

In the evidence of Mr. Mallory it is stated by that gentleman that complaints were made to him that the Clerk of the Court, and the registration officer, offered obstacles to the registering Democratic Electors. The gentleman's statement, given in all its force, is simply that about fifty foreigners were refused registration, because they did not show their naturalization papers. We think no Senator, with the Constitution of the United States in mind, will say that there was wrong on the officer's part. Production of naturalization papers is by that instrument required without challenge. See Article 14, section 3, Constitution of Florida.

Mr. Mallory also says that colored men applied to Mr. Stearns for registration. The Senate will no doubt be surprised to learn that the misconduct on the part of that officer was not in refusing them, nor offering obstacles to their registration, but in not offering to do so; that is, he registered them without asking questions.

Mr. Mallory also complains because he found one colored voter who told him he wanted to vote for him and Mr. McGuire, but didn't do so from fear of being shot. We do not think the circumstances grave enough to warrant the Senate in turning Mr. Ferguson out.

THIRD CHARGE.

The third charge is of fraud, which is said to consist of voting by minors and non-residents.

This has a serious sound when read, and raises a suspicion of something dreadful perpetrated by a board of wicked inspectors. It may startle the Senate to learn that there is not a scintilla of proof to sustain the charge. No man swears to the voting of one minor or non-resident.

FOURTH CHARGE.

Intimidation is the fourth charge. One negro goes the length of telling a witness that he was kept from voting for the Democratic candidates through fear. He did not say he did not vote—only that he did not vote for Mr. Mallory and Mr. McGuire. Neither does he say of whom he was afraid. We think it only necessary to refer the case to the experience of Democratic Senators. As to United States soldiers being present at the election, they appear to have been but poor ghosts, who vanished without a word said.

FIFTH CHARGE.

The contestant makes a fifth charge, to the effect that two of the Inspectors and Clerk at Nix's precinct were non-residents of the State, and unauthorized to hold an election at the precinct.

We challenge a reading of the evidence on this charge. If read, it would appear, by the admission of Mr. Mallory, that the precinct was regularly established by the Commissioners, and while this appears, it is nowhere shown that the Inspectors were not also regularly appointed by the same authority. The legal presumption is, they were duly appointed.

SIXTH CHARGE.

The sixth charge is that the Inspectors and Clerk at Nix's precinct were not sworn by officers authorized to administer oaths.

If this were true, it would not vitiate the election at that precinct. On this head there is abundance of authority; but it is superfluous to make citations as there is absolutely no evidence whatever to sustain the charge.

SEVENTH CHARGE.

In the seventh place it is charged that of the 279 votes cast

at Nix's precinct all but four were residents of the United States Naval Reserve.

The argument on this head is, that, because the 275 voters resided on the Naval Reserve, they were not qualified electors. The subject is worth inquiry, not merely for the bearing it may have on this case, but as a matter of interest to citizens resident on the several National Reserves in Florida.

We begin by saying that the voting of such people, qualified in all other respects, has the sanction of custom. Mr. Rowley represented Escambia county in the Constitutional Convention of 1868, partly in virtue of the votes cast by residents of the Reserve. Not that only Mr. Rowley himself lived on the Reserve. In the first Legislature under that Constitution, John Varnum, present Adjutant-General of the State, represented Escambia county, and at the time he was a resident of the Reserve. Surely, he must have been regarded as a citizen of Florida. Nobody was heard to complain that he held his office by election of non-residents.

Only two years ago the contestant in this case, Mr. McGuire, had the benefit of the votes cast in his favor by residents of the Reserve, and he held his seat, no man demurring. In the same session, Mr. Jones, now United States Senator from Florida, was elected in part by the same votes; and when, a little later, in presence of a joint convention of the two houses he excused himself for voting for himself, it was upon the ground that he cast his vote as the representative of three thousand constituents. Doubtless it never occurred to him in that sovereign moment that the people of the Reserve were not represented by him quite as much as the inhabitants of the city of Pensacola. Is it strange that we now turn and say Mr. McGuire is estopped from denying the right of suffrage his old constituency?

In the next place, treating the question as one purely of law:

In 1859 the Legislature passed an act upon the subject, in which it was provided that persons residing on the Reserves in Florida, should, under certain restrictions stated, be entitled to vote like other citizens of the State. Of this act we say, in the first place, it stands unrepealed. In the next place, we say it was in existence when the present Constitution of 1868 was adopted. The Convention had opportunity to repeal it. If they did not, the inference is they were satisfied with the measure. To conclude this point, we say emphatically the Constitution not only did not disturb the act, but actually approved it in form even more solemn.

This brings the consideration down to the Constitution. What is the effect of that high instrument upon the subject?

Article XIV is devoted to suffrage and eligibility. The first section of that article defines, with becoming care, who shall be deemed qualified electors. Not content with that, we are told with equal care in the second section who are persons not qualified to vote.

Now, because this is the supreme law, of itself all-sufficient, it is not possible for the Legislature, in an effort to deprive this or that man of his right to vote, to add one qualification to those sacredly bedded in the first section; no more can the Legislature, by process of subtraction, take one of the conditions from that section in order to clothe with right of suffrage a man ineligible under it. If any Senator doubts the correctness of the principle we are stating, of the many adjudicated cases we might refer him to, we will content ourselves with asking him to read but one—the case of Rison and others vs. Harr, 42 Ark., 162. There the question is fully discussed, and after examining it no gentleman can be excused for not knowing the law.

To make the application now, we ask if the first section of Article XIV divests the residents of the reserves of any right with which they were clothed by the act of 1859? Far from that, we say it confers the privilege, stripped of the conditions that burdened this act. Now, the question is, not whether the man lives on the reserve—not whether he paid taxes—not whether he was assessed here or there, but is he within the conditions prescribed by the Constitution? That is the key which holds the true determination of this question.

We will not stop to ask if the State Convention could adopt such an article consistently with the Constitution of the United States. There is but one limitation upon the power of the States, as respects the right of suffrage, and that is the Fifteenth Amendment to the National Constitution, which forbids any distinction on account of "race, color or previous condition of servitude." See 53 Penn. State Rep., 115; 23 Maryland, 531; Brightly's Election Cases, 27; 1 Story Const., Chap. 9, Secs. 581 and 582.

The question is disposed of, yet we would like to ask, how does the mere fact that a man resides on the reserve affect his citizenship? If, when he went there he was a citizen of Florida, does he lose it by the act? With much more force may it be said the citizen of the United States, by merely going abroad, loses his privileges of citizenship of the United States. The individual upon the reserve must have citizenship somewhere. If a citizen of the United States, he must be a citizen of some one of the States; if a citizen of Florida, he is entitled to the privileges of citizenship in Florida. Amongst others, he is entitled to vote, provided only he is within the Constitution of Florida.

EIGHTH CHARGE.

The eighth charge is an accusation that somebody, name not given, secured for the Republican nominee votes of persons imported into the State.

It is sufficient that Mr. Ferguson is not the person accused; much less is the charge attempted to be proved against him.

NINTH CHARGE.

The ninth charge is to the effect that somebody—name not given again—abstracted the poll list of Millview Precinct from the Inspectors.

In conclusion of the charge, it is gravely stated that the missing list was in possession of an "irresponsible person" the whole time of five hours, during which the counting was done. In this way we are assured that Mr. Ferguson was not the guilty party. Moreover, we are not informed by any evidence which party was worst hurt by the larceny. If the harm was to the Republicans, a Democrat should not cry over it.

TENTH CHARGE.

There was an increased vote and registration of colored men in the county, to the number of five hundred, over former elections; and this is made the subject of the tenth and last charge.

The increase is called a *fraud*. We presume the gravamen of this circumstance is to be found in the fact that the increase was of colored men. How they voted is of so little consequence that it was not mentioned in the specification. There was no proof to sustain the charge, and it must be treated, consequently, as flung in for bulk.

We have now gone through the bill item by item; and we put it to the intelligence, sense of justice and honor of Senators, if a gentleman otherwise reputable and worthy to represent his county, shall be turned out upon excuses so flimsy, vague and unsubstantiated. The exercise of the power of the Senate to such an end would be harmful as a precedent. Parties go up and down, and have uncertain lease of power in our country. A lively recollection of this fact is sometimes beneficial. In this case we respectfully recommend it to the consideration of the majority.

ROBERT MEACHAM,
J. W. HOWELL.

On motion, the Senate adjourned until to-morrow morning, 10 o'clock, A. M.