

H. OF R.

The Election of President and Vice President.

FEBRUARY, 1821.

WEDNESDAY, February 4.

Mr. LIVERMORE, from the Committee on the Post Office and Post Roads, reported a bill in addition to the act regulating the Post Office Establishment; which was read twice, and ordered to lie on the table.

[This bill contains provisions, to reduce the compensation to postmasters to three per cent. on any excess of receipt of postage over three thousand six hundred dollars per quarter; to repeal the extra allowance of one thousand dollars per annum to the postmaster at Washington City; to prohibit any postmaster, or editor or printer of a newspaper, from contracting for the transportation of the mail; to require bonds from persons stipulating for the carriage of newspapers other than in the mail, that they shall carry all papers delivered to them and on equal terms; to compel postmasters to reside in the city, town, village, or place in which their offices are established, and to limit their privilege of franking, to letters, newspapers, and packets, directed to and from their respective offices.]

A message from the Senate informed the House that the Senate have appointed Mr. BARBOUR a teller, on their part, agreeably to the resolutions of the 13th instant, in relation to the mode of examining the votes for President and Vice President of the United States.

ELECTION OF PRESIDENT AND VICE PRESIDENT.

Mr. CLAY, from the joint committee, to whom the subject had been referred, reported the following resolution:

Resolved, That the two Houses shall assemble in the Chamber of the House of Representatives, on Wednesday, the 14th February, 1821, and the President of the Senate, seated on the right of the Speaker of the House, shall be the presiding officer of the Senate, and the Speaker shall be the presiding officer of the House; that two persons be appointed tellers on the part of the House, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, and the persons elected, to the two Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

Resolved, That, if any objection be made to the votes of Missouri, and the counting or omitting to count which shall not essentially change the result of the election; in that case they shall be reported by the President of the Senate in the following manner: Were the votes of Missouri to be counted, the result would be, for A. B. for President of the United States, — votes; if not counted, for A. B. as President of the United States, — votes; but in either event A. B. is elected President of the United States; and in the same manner for Vice President.

Mr. CLAY offered some remarks explanatory of the considerations which governed the committee in recommending the resolutions which had been reported. As convenience rendered it necessary for the Senate to meet this House here, in its own Hall, it was due to that body, by courtesy and

propriety, that the President should be invited to preside, he being the officer designated by the Constitution to perform a certain duty appertaining to the occasion which called the two Houses together. As to the second resolution, the state of the votes for President and Vice President was well known, though unofficially, and, as the votes of Missouri could not affect the result, it was considered by the committee, to obviate the unpleasant difficulty which would otherwise arise in the joint meeting, better to provide for the case in the manner proposed. This course was deemed by the committee the most expedient, under all the circumstances, and he hoped the House would adopt it, the more especially as the Senate had already concurred in it.

The question was taken on the first resolution, and agreed to without a division, though several nays were heard.

The question being stated on the second resolution—

Mr. RANDOLPH said he could not consent to this special verdict, as it had been called, in the case of Missouri. He could not recognise in this House or the other House, singly, or conjointly, the power to decide on the votes of any State. Suppose, he said, you strike out Missouri and insert South Carolina, which also has a provision in its constitution repugnant to the Constitution of the United States; or Virginia, or Massachusetts, which had a test, he believed, in its constitution; was there any less power to decide on their votes, than on those of Missouri? He maintained that the Electoral College was as independent of Congress, as Congress of them; and we have no right, said he, to judge of their proceedings. Mr. R. said, he would rather see an interregnum, or see no votes counted at all, than to see a principle adopted which went to the very foundation on which the Presidential office rested. Suppose a case, in which some gentleman of one House or the other should choose to turn up his nose at the vote of some State, and say that if it be so and so, such a person is elected; and if so and so, what-you-call-em is elected—did not everybody see the absurdity of such a proposition? Mr. R. added other remarks illustrative of his opinion of the course proposed by the resolution—deeming it not only erroneous, but erroneous in a matter of vital importance—in the ascertainment of the person who had been elected by the people Chief Magistrate of this nation—the most important officer under the Constitution—the monarch—for, whoever, in any country, commands the army and navy, and collects and distributes the revenue, is a king, call him what you will. The time of this House was precious, and he would not consume it, by saying all he thought and felt on the subject.

Mr. TRIMBLE was far from desiring to consume the time of the House, or to embarrass the House, but he could not give his consent to this resolution. If any thing was due to State rights, this resolution ought not to be adopted; as it would, however immaterial in the present case, be cited hereafter as a precedent; and precedents were becoming important things in the public transac-

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tions. The House might set an example by this vote, as ruinous in its consequences, as any decision which could be made. It was about to declare, not what was the true vote for President of the United States, but to state it hypothetically. Mr. T. argued at some length against such a course. Suppose some member in joint meeting should ask the President of the Senate how many votes were given—he must answer in the words of the resolution, and therefore would not state the fact, according to the law. It was the duty of the two Houses to enunciate the true state of the vote for President and Vice President, and the proposed announcement would not be the fact. He concluded by saying that he would rather that the votes of Missouri were left out altogether, than adopt the course proposed.

Mr. RANDOLPH observed that the gentleman was under some mistake on one point. The Constitution of the United States provides, not that the person having a majority of votes should be President, but a majority of the votes of the Electors appointed. Now, he desired to know whether the Electors of Missouri were appointed or not.

Mr. FLOYD said he was aware that the question to agree to the resolution was tantamount to a motion to reject, but he would prefer the latter shape for the question, to show more strongly his opinion of it—it would suit his feelings towards it better. We have been going on for several years, said he, accumulating power until scarcely any is left but in Congress. If they had any power over the votes of Missouri at all, he said, it was when her votes were first received; but no such power existed. The votes of Indiana, at the last election for President, were counted when precisely in the same situation as those of Missouri now. He protested against this assumption of authority on the part of Congress, and wished to show his disapprobation of the resolution in the strongest manner.

Mr. CLAY said the Constitution required of the two Houses to assemble and perform the highest duty that could devolve on a public body—to ascertain who had been elected by the people to administer their national concerns. In a case of votes coming forward which could not be counted, the Constitution was silent; but, fortunately, the end in that case carried with it the means. The two Houses were called on to enumerate the votes for President and Vice President; of course they were called on to decide what are votes. It being obvious that a difficulty would arise in the joint meeting, concerning the votes of Missouri, some gentlemen thinking they ought to be counted, and others dissenting from that opinion, the committee thought it best to prevent all difficulty by waiving the question in the manner proposed, knowing that it could not affect the result of the election. As to the condition of Missouri, he himself thought her a State, with a perfect moral right to be admitted into the Union, but kept out for the want of a ceremonious act which was deemed by others necessary to entitle her to admission. Though, in his opinion, a State in fact, yet not being so in form, her votes could not be

counted according to form. He was aware that the question of her admission might come up and be decided in this very shape; for if Congress allowed her to vote for President and Vice President, and counted her votes, it would be a full admission of the State into the Union; but the committee thought, as there were other and more usual modes of admitting the State into the Union, it was better not to bring up the question in the discharge of this solemn and indispensable duty, but to allow that ceremony to proceed, if possible, without difficulty or embarrassment.

Mr. RHEA said the Constitution had in it neither waiving or elasticity, and it would not bend to circumstances of expediency. The Constitution had declared the duty of Congress in ascertaining the votes for President—it was not competent for them to mend the Constitution, nor to decide such a question as this proposed, and he was opposed to the resolution.

Mr. TRIMBLE said the very reason urged for this resolution, was that which constrained him to oppose it; and proceeded further to argue that it would be better to exclude the votes entirely than set such an example.

Mr. CULBRETH said he could hardly say whether he was most gratified at being relieved, by the gentleman from Virginia, (Mr. RANDOLPH,) from being the first to make objection to the proposed resolution, or grieved that he could not have the support of the gentleman from Kentucky, with whom it had given him great pleasure usually to act. The people of Missouri were, by the act of the last session of Congress authorized to form a constitution and State government; and, in the first article of that constitution, it is declared that the said State, when formed, "shall be admitted into the Union upon an equal footing with the original States, in all respects whatever." Believing that the people of Missouri, having formed a constitution and State government, in compliance with the act of last session, in all its provisions and conditions, and considering that she is, in fact, a State, and of right, if not in fact, (and he inclined to believe she was in fact,) a member of the Union, and that she is kept out of the enjoyment of her rights by a sheer act of power—he spoke this in reference to the act, and not to the actors—that simple justice required her admission to the enjoyment of her rights. Mr. C. said he found, on examination of the constitution of Missouri, that all officers, civil and military, are required, before entering upon the duties of their respective offices, to take an oath to support the Constitution of the United States, as well as of that State. It is declared (I use the word *declared* emphatically) by the constitution of the said State to be the duty of the General Assembly, as soon as may be, to pass such laws as may be necessary "to prevent free negroes and unaluttees from coming to and settling in said State, under any pretext whatsoever." This last clause is supposed by some to be repugnant to the Constitution of the United States. It is believed that a fair construction of the clause referred to, taken in connexion with the oath which the individual members of the General As-

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sembly are required to take, does not warrant such a conclusion. In the spirit of candor, I ask gentlemen, said Mr. C., who entertain this opinion, what is the actual duty of the General Assembly of Missouri, resulting from the oath which they are required to take and the declaratory clause above referred to? I appeal to them as statesmen, as politicians, as common lawyers, nay, as gentlemen of common sense, whether a fair and liberal construction—whether the obvious and only fair construction that can be given to the clause objected to, will not reconcile it with the Constitution of the United States? Will it not be the duty of the General Assembly of Missouri, acting under their oath to support the Constitution of the United States, to pass no law which shall violate that oath or be repugnant to that Constitution? To use the language of the gentleman from Ohio, (Mr. Ross,) on yesterday, can it be believed that they will commit perjury by the passage of such a law? [Here the Speaker reminded Mr. C. that the hour for counting the votes had arrived, and intimated the propriety of his remarks being brought to a conclusion.] Mr. C. respectfully answered that he knew of no hour appointed for any purpose in relation to the business of the House; that, under the suggestion of the honorable Speaker, as well as from a sense of propriety, he should bring his remarks to a conclusion as speedily as possible, consistent with a distinct expression of his views upon the subject before the House. It seems to me, Mr. Speaker, said Mr. C., that if gentlemen could divest themselves of all prejudices—if they were not insensibly influenced by feelings and considerations not necessarily excited by the provision in question, that they would have no difficulty in reconciling the seeming conflict between the Constitution of the United States and the so often referred to clause in the constitution of Missouri. The General Assembly of Missouri will undoubtedly feel themselves bound to perform the duty enjoined upon them by the constitution of that State, limited by the paramount authority of the Constitution of the United States, conformably to the oath which they are required to take. If they were to attempt to extend the provisions of any law beyond this limit their act would be, so far, not only void, but, if knowingly committed, the members would be guilty of perjury. I have no more to add.

Mr. TRACY was compelled, he said, to vote against the resolution, but for reasons very different from those of Mr. CULBRETH. He was opposed to the resolution because Missouri was neither a State in the Union nor one out of the Union; but was in fact a Territory. He could not, therefore, consent that her votes should be counted at all—considering them entirely foreign to the election of President and Vice President of the United States.

Mr. CLAY said he would merely observe, that the difficulty is before us; that we must decide it when the two Houses meet, or avoid it by some previous arrangement. The Committee being morally certain that the question would arise on the votes, in joint meeting, thought it best, as he

had before stated, to give it the go-by in this way. Suppose this resolution not adopted, the President of the Senate will proceed to open and count the votes; and would the House allow that officer, singly and alone, thus, virtually, to decide the question of the legality of the votes? If not, how then were they to proceed? Was it to be settled by the decision of the two Houses conjointly, or of the two Houses separately? One House would say the votes ought to be counted, the other that they ought not; and then the votes would be lost altogether. Would the gentleman from New York prefer that it be decided in the joint meeting? In that case he would find himself in a much leaner majority than on the question yesterday. In fact, Mr. C. said there was no mode pointed out in the Constitution of settling litigated questions arising in the discharge of this duty; it was a *casus omissus*; and he thought it would be proper, either by some act of derivative legislation, or by an amendment of the Constitution itself, to supply the defect.

Mr. LIVERMORE made a few remarks in favor of the resolution.

Mr. RHEA made a few remarks in opposition to the resolution. The ground he took was this: that it was not in the power of this House, or of both Houses, by resolution, to remedy a defect in the Constitution.

The question on agreeing to the resolution was then decided in the affirmative—yeas 90, nays 67, as follows:

YEAS—Messrs. Abbot, Alexander, Allen of Massachusetts, Allen of New York, Anderson, Archer, of Maryland, Baker, Bateman, Beecher, Campbell, Cannon, Clagett, Clark, Clay, Cook, Cushman, Dane, Darlington, Davidson, Dennison, Dickinson, Eddy, Edwards of Connecticut, Eustis, Fay, Folger, Foot, Ford, Fuller, Gorham, Gross of New York, Gross of Pennsylvania, Hackley, Hall of New York, Hemphill, Hendricks, Herrick, Hill, Hobart, Hostetter, Kendall, Kent, Kinsey, Kinsley, Lahrop, Little, Livermore, Maclay, McCoy, McCreary, McCullough, McLean of Kentucky, Mallary, Marchand, Meech, Meigs, Monell, Montgomery, R. Moore, S. Moore, T. L. Moore, Moseley, Murray, Neale, Nelson of Massachusetts, Parker of Massachusetts, Patterson, Philson, Pitcher, Plumer, Rogers, Russ, Sawyer, Sergeant, Silsbee, Sloan, Stevens, Storrs, Street, Strong of Vermont, Strong of New York, Tomlinson, Udree, Upham, Van Rensselaer, Walker, Wallace, Wendover, Whitman, and Wood—90.

NAYS—Messrs. Adams, Allen of Tennessee, Archer of Virginia, Baldwin, Ball, Barbour, Bayly, Blackledge, Bloomfield, Boden, Brevard, Brown, Brush, Bryan, Buffum, Butler of Louisiana, Case, Cobb, Cocke, Crafts, Crawford, Crowell, Culbreth, Culpeper, Cuthbert, Earle, Edwards of Pennsylvania, Edwards of North Carolina, Floyd, Forrest, Gray, Hall of North Carolina, Hooks, Johnson, Jones of Virginia, Jones of Tennessee, Lincoln, Mercer, Metcalf, Morton, Nelson of Virginia, Newton, Parker of Virginia, Pinckney, Randolph, Reid, Rhea, Richards, Richmond, Ringgold, Robertson, Ross, Shaw, Simkins, Smith of New Jersey, Smith of Maryland, A. Smyth of Virginia, Smith of North Carolina, Swearingen, Terrell, Tracy, Trimble, Tucker of Virginia, Tucker of South Ca-

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rolina, Tyler, Williams of Virginia, and Williams of North Carolina.—67.

So the second resolution was agreed to.

On motion of Mr. CLAY, it was then ordered, that a message be sent to the Senate, informing that body, that this House, on its part, concurs in the report of the joint committee, and is now prepared to proceed, with the Senate, in the performance of its Constitutional duty.

[MESSRS. CLAY, SERGEANT, and VAN RENSSLAER, were the committee on the part of the House of Representatives, to act with the committee of the Senate, in considering the proper mode of proceeding in regard to counting out the Electoral votes.]

Mr. EDWARDS, of North Carolina, gave notice he should, on to-morrow at twelve o'clock, offer for the consideration of the House a resolution declaring the admission of the State of Missouri into the Union, containing in all respects the same provisions as were contained in the resolution from the Senate, which was rejected in this House.

On motion of Mr. CLAY, and by general consent, it was determined that the members of this House should receive the Senate, on their entrance into the House, standing and uncovered. In the same manner it was determined that a sufficient number of the seats on the right hand of the Chair, should be set apart for the Senators.

Mr. CLAY moved that a committee of two members be appointed to receive the Senate, and conduct the President of the Senate to the chair, and the members to the seats assigned to them.

Mr. NELSON, of Virginia, declared his opposition to this course. It had been usual for the Speaker of the House to receive the President of the Senate, and invite him to a seat beside him; and he saw no reason, at this time, for the proposed innovation.

Mr. CLAY said it was true it never had been done before; but, having, whilst he had the honor to preside over this House, witnessed the embarrassments occasioned by the want of such a regulation, he now thought it would be proper to adopt it.

The motion of Mr. CLAY was then agreed to without a division, though not without negative votes.

Mr. NELSON remarked, in an under tone, that he wished he had required the yeas and nays upon it.

Mr. CLAY and Mr. HILL, were appointed a committee accordingly.

Soon after, the Senate came into the Hall, preceded by its President, and attended by its Secretary and Sergeant-at-Arms; and the President was conducted to the Speaker's chair, the Speaker occupying a chair at his left hand.

The PRESIDENT of the Senate then delivered the votes of the States, in the following order, to the committee for counting the votes, (Mr. BARBOUR of the Senate, and Messrs. SMITH of Maryland, and SERGEANT of this House)—and the official authentications, &c., were each of them twice read in an audible tone, and the votes recorded by the Secretary of the Senate and by the Clerk of the House of Representatives, as follows:

STATES.	For President.	For Vice President.
	James Monroe.	D. D. Tompkins.
New Hampshire	7	7
Massachusetts	15	7
Rhode Island	4	4
Connecticut	9	9
Vermont	8	8
New York	29	29
New Jersey	8	8
Pennsylvania	24	24
Delaware	4	
Maryland	11	10
Virginia	25	25
North Carolina	15	15
South Carolina	11	11
Georgia	8	8
Kentucky	12	12
Tennessee	7	7
Ohio	8	8
Louisiana	3	3
Mississippi	2	2
Indiana	3	3
Illinois	3	3
Alabama	3	3
Maine	9	9

The scattering votes were as follows: For President, in New Hampshire, there was for John Quincy Adams, one vote. For Vice President, there was, in New Hampshire, for Richard Rush, one vote; in Massachusetts, for Richard Stockton, eight votes; in Delaware, for Daniel Rodney, four votes; in Maryland, for Robert Goodloe Harper, one vote.

The process of this ceremony was very tedious, from the length of the verifications, proclamations, &c., and the House did not arrive at this stage of it till after four o'clock.

When the votes of the Electors for Missouri were announced, by the PRESIDENT of the Senate, and handed to the tellers—

Mr. LIVERMORE, of New Hampshire, rose, and said: Mr. President and Mr. Speaker, I object to receiving any votes for President and Vice President from Missouri, because Missouri is not a State of this Union.

A motion was then made by a member of the Senate, that the Senate do now withdraw to its Chamber; and, the question having been put, was decided in the affirmative; and the Senate retired.

The House being called to order—

Mr. FLOYD, of Virginia, then rose and submitted the following resolution:

Resolved, That Missouri is one of the States of this Union, and her votes for President and Vice President of the United States ought to be received and counted.

Mr. F. said, he believed, that gentlemen must now begin to see the precipice to which the decisions of this House in respect to Missouri had brought them. He was, as every member must be, tired of the debate on this subject; but he thought that no one could discharge his duty as he ought without investigating the merits of the

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question which he had now proposed. He thought it proper, also, that the yeas and nays should be recorded on every question connected with this subject. That the votes of States, whose admission into the Union had not been declared previous to the votes being given in, had heretofore been received for President and Vice President, he believed the gentleman from New Hampshire would not deny. If such a course had been right heretofore, he did not see why an objection should now be made. If innovations on established usage were to be justified by their novelty, then indeed all disquisitions on the subject were vain. But the time was, when members from new States were admitted to their seats in this House, without the previous passage of a declaratory resolution. That there was a law on the statute book that any Territory having a population of sixty thousand souls might form a constitution and State government and be admitted into the Union, no one would deny. Whenever we turn our eyes, said Mr. F., and observe the progress of the Government, until the present time, the States have been admitted upon this principle, until in the present case; and in this case, at the last session, a compromise, as it was thought and called, was entered into. Mr. F. hesitated to express in terms all he thought on this subject; but he would say, if he had voted for that law at the last session; and opposed now those principles which would naturally grow out of it, he should have said to himself, when he had done so, that he had done in his life one act which he thought dishonorable. Let us now, said he, have the question fairly at issue. Let us know whether Missouri be a State in the Union or not. If not, let us send her an Ambassador, and treat for her admission into the Union. Sir, we cannot take another step, without hurling this Government into the gulf of destruction. For one, I say, I have gone as far as I can go in the way of compromise—and if there is to be a compromise beyond that point, it must be at the edge of the sword.

Mr. ARCHER, of Maryland said, that entertaining the same sentiments as the gentleman from Virginia with respect to the refusal to admit Missouri into the Union, he yet felt himself bound to move, as he now did, to postpone the further consideration of this resolution indefinitely. He was opposed to this House undertaking to proceed in any manner as to the legality of the Electoral votes. He could recognise no power in the House of Representatives on this subject separate from the Senate. The expressions in the Constitution, in regard to the counting of the votes of Electors, &c., he considered as imperative. All questions arising out of it, according to his construction, must be settled in joint meeting of the two Houses. He could not agree that this House had a right to determine whether any vote should be received or rejected. What are the words of the Constitution? "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." Does it not follow, asked Mr. R., that the votes must be counted in

the presence of the two Houses? For what purpose do they assemble together, unless it be to determine on the legality of the votes? If not for this purpose, the joint meeting is for form and show, and nothing else. We must, in my apprehension, determine the question in joint meeting, and in no other way. Entertaining this opinion, he said, he should vote for the indefinite postponement of any proposition, the object of which is to determine, in this House, the legality or illegality of any Electoral vote. At the last election of President, an objection was made, by the gentleman who now presides, to receiving the votes of Indiana, because they were given in before the passage of the act declaring her admission into the Union. On that occasion, as now, the Senate retired. I thought then, as now, said Mr. A., that they had no right to retire until the question was settled. On that occasion, the House determined to postpone indefinitely the objection. The motives which induced that determination were doubtless various; it was my opinion, then, that it was improper to entertain the objection in the House, and I think the same of the present proposition.

Mr. RANDOLPH said, it was not without reluctance that he offered himself to the attention of the House at this time; but he submitted to the very worthy gentleman from Maryland who had just taken his seat, whether the object which he had in view could, according to his own views of propriety, be effectuated by the course which he had recommended to this House. It was no part of his nature, Mr. R. said, nor of his purpose, to inflate to a greater magnitude this exaggerated question of the admission of Missouri into the Union. But the question had now assumed that aspect which, had it depended on him, it should have taken at an earlier period of the session. It was, he said, not only congenial with the principles and practices of our free Government, but unless he was deceived with the practice of that country from which we had adopted, and wisely adopted, our manly institutions, that on any occasion when any person presents himself to a representative body with credentials of title to a seat, he shall take his seat, and perform the functions of a member, until a prior and a better claim shall not only be preferred, but established. It was seen that, but the day before yesterday, the Committee of Elections of this House came forward with a report, stating that the qualifications and returns of certain members were perfect who have been acting and legislating, and on whose votes the laws of the land have depended for the last three or four months. Just so it ought to have been with regard to the Representative from the State of Missouri. She had now, said Mr. R., presented herself, for the first time, in a visible and tangible shape. She comes into this House, not *in forma pauperis*, but claiming to be one of the co-sovereignities of this confederated Government, and presents to you her vote, by receiving or rejecting which the election of your Chief Magistrate will be lawful or unlawful. He did not mean by the vote of Missouri, but by the votes of all the States.

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Now comes the question, whether we will not merely repel her, but repel her with scorn and contumely. *Cui bono?* And, he might add, *quo warranto?* He should like to hear, he said, from the gentleman from New Hampshire, (Mr. LIVERMORE,) where this House gets its authority—he should like to hear some of the learned, or unlearned, sages of the law, with which this House, as well as all our legislative bodies, abounds, show their authority for refusing to receive the votes from Missouri. Mr. R. said, he went back to the first principles. The Electoral Colleges, he said, are as independent of this House, as this House is of them. They had as good a right to pronounce on their qualifications, as this House has of those of its members. Your office, said, he, in regard to the electoral votes, is merely ministerial. It is to count the votes, and you undertake to reject votes. To what will this lead? Do you ever expect to see the time when there shall be in the Presidential chair a creature so poor, so imbecile, not only not worthy of being at the head of the nation, but not worthy of being at the head of a petty corporation—do you ever expect to see in that office an animal so poor, as not to have in this House retainers enough to enable him to reject the vote of any State which, being counted, might prevent his continuance, and their continuance, and that of their friends, in office? He spoke not of the present incumbent—he was not so wanting in common decency and decorum as to do so—he spoke in reference not only to what is past, but to that which is prospective, and which every man, who looks the least into futurity, must know will happen, and, in all probability, will very shortly happen. He undertook to say that if this House should, by a vote of indefinite postponement—for the form was immaterial—or in any other way, and it would be observed, for the first instance in the person of Missouri, of this much injured, long insulted and trampled-upon member of this confederacy, was this example to be set—if, said he, you do, for the first time, now receive the votes of a State, it will be created into a precedent, and that in the life-time of some of those who now hear me, for the manufacture of Presidents by this House. The wisest men may make constitutions, on paper, as they please.

What, Mr. R. asked, was the theory of this Constitution? It is, that this House, except upon a certain contingency, has nothing at all to do with the appointment of President and Vice President of the United States, and when it does act, must act by States, and by States only can it act on this subject, unless it transcend the limits of the Constitution. What, he asked, was to be the practice of the Constitution, as now proposed? That an informal meeting of this and the other House is to usurp the initiative, the nominative power, with regard to the two first officers of the Government; that they are to wrest from the people of the United States their indefeasible right of telling us whom they wish to exercise the functions of the Government, in despite and contempt of their decision. Is there to be no limit to the power of Congress—no mound or barrier

to stay their usurpation? Why were the electoral bodies established? The Constitution, each by itself, and not in one great assembly. By this means, assuredly, that system of intrigue which was matured into a science, or rather into an art here, was guarded against. But, Mr. R. ventured to say, that the electoral college of this much-despised Missouri, acting conformably to law, and to the genius and nature of our institutions, if it were composed of but one man, was as independent of this House as this House was of it. If, however, said he, *per fas aut nefas*, the point is to be carried; if the tocsin is to be sounded; if the troops are to be rallied, and Missouri is to be expelled with scorn from our august presence—how august, Mr. Speaker, I leave it for you to decide—there are those who will be willing to take her to their arms. And, in point of mere expediency, he would ask of gentlemen—he put the suggestion in that shape, because he believed they were inaccessible to other considerations—in point of expediency, he asked them, what were they now doing but riveting those ties by which Missouri would, he trusted, forever be bound to that section of the country by which, with whatever reason, her rights have been supported on this floor? I do look with a sentiment I cannot express, said Mr. R.—I look with a sentiment of pity—and that has been said to be nearly allied to love, as I know it to be allied to a very different emotion—I look with pity on those who believe that, by their feeble efforts in this House, governed by forms and technicalities—your Sergeant-at-Arms and committees of attendance, and mummeries such as belong to other countries where I have never travelled, and trust in God I never shall—they can stop the growth of the rising Empire in the West. Let gentlemen lay a resolution on the table, let it be engrossed in a fair hand, and do you, Mr. Speaker, sign it, that the waves of the Mississippi shall not seek the ocean, and then send your Sergeant-at-Arms to carry it into execution, and see whether you can enforce it with all the force, physical or moral, under your control. Mr. R. concluded by expressing his hope that the gentleman from Maryland would withdraw his motion for indefinite postponement.

Mr. ARCHER, of Virginia, said he believed it was pretty well ascertained that he was willing to go as great lengths as any man in this House to support the rights of Missouri. He regretted that, even in this skirmish, he was obliged to separate himself from those with whom he had acted with so much pleasure and with so much zeal. But he could not maintain, what he should do by voting for this resolution, that Missouri is now a State of this Union. Was it contended that Congress has not a right to require the submission of the constitution of a new State to its consideration before she becomes a member of the Union? If so, would any man contend that Congress had not a right to pass, in some shape or other, upon the constitution of any new State? Was there any one of his colleagues who would say, that there was no possible case in which he might not be

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induced to reject the constitution of Missouri? Suppose the constitution she has offered had been notoriously aristocratical, was there any man among them who would not have given his vote for the exclusion of Missouri from the confederacy? We presume not. If he were to give his vote for this resolution, Mr. A. said, he should contradict all the language he had hitherto held in respect to Missouri; for, if she was a State without the consent of Congress, she had no right to complain of oppression by the refusal of Congress to recognise her.

Mr. A. said, he should continue to reprobate the odious and foul combination by which Missouri is kept out of the Union; but should he give a vote for this resolution, he should feel himself precluded from doing so. If, indeed, the case were presented, whether the member from Missouri should be admitted to a seat on this floor, he should give a vote affirmatively; for it would be tantamount to an admission of the State of Missouri into the Union. But, were he to vote for this proposition, he should vote for an evident solecism; it would be saying that, though it has been decided that Missouri shall not be admitted into the Union, yet she shall exercise the highest functions of a member of the Confederacy. Mr. A. said he could not hold that language, or present himself in that character. Opposed in general to postponements, he should vote against the proposed postponement, in order to meet the question directly. He had no notion, he added, of the doctrine which he had heard for the first time to-day, that you may have a problematical or hypothetical election of a President and Vice President. Suppose the result of the election depended on the votes of Missouri, and the same course was to be pursued which was now indicated; the President of the Senate would have to announce that, in one event, we had a President, whilst in another we had not, and the Government would be left without a head, and a dissolution of the Union would be the possible immediate consequence. He was a little surprised, he said, at one ground which had been taken on this occasion: that the House had no power to pass any judgment on any return. He had always thought that, wherever was lodged the power to receive a return, there also was the power to pass a judgment on the validity of that return. Suppose any territory, not within the limits of the United States at the time, Florida, for example, to send votes here for Electors; was there no authority by which these votes could be rejected? Suppose a State, entitled to 27 votes, should send 37 votes, would any gentleman contend that there was no power in this House to judge of the proper number? Could there ever be a pure election—could it ever be ascertained who was elected, in the event of the establishment of a doctrine of that sort? Mr. A. concluded, by declaring his readiness to adopt any measure to bring Missouri, now trampled down by power, into the Union, but he could not vote for this resolution.

Mr. CLAY next obtained the floor, but gave way to allow Mr. RANDOLPH to make an explanation.

Mr. RANDOLPH said, it was highly probable that

the few remarks which he had made might give rise to misapprehensions in the minds of other gentlemen, as they had done in the mind of his colleague. He, therefore, wished to explain. His position, he said, was misunderstood. It had been said, and pertinently said, that Missouri might be admitted into the Union in more ways than one. His position, then, was, that this is the first instance in which Missouri has knocked at the door and demanded her rights. It is now for us, said Mr. R., by permitting her to come in, or rather by refraining from extruding her from this Hall, to determine whether she shall now be one of our Commonwealth, or, as the fashion is to call it, of our Empire. Mr. R. said he had no doubt that Congress might drive Missouri into the wilderness, like another son of Hagar. If we do, said he, we drive her at our own peril. If either of the worthy Senators and Representative from Missouri, whose long forbearance had excited surprise in no man's breast more than in that of Mr. R.—he did not mean to blame them for pursuing the counsel of cooler heads than his—had presented themselves here, would you (addressing the Speaker) have felt yourself bound to exclude them from the communion with more than papal power; not only from the cup of wine, but from the bread of life itself? Let me tell my friend before me, (Mr. ARCHER,) we have not the power which he seems to think we possess; and if this be a *casus omissus* in the Constitution, I want to know where we acquire the power to supply the defect. You may keep Missouri out of the Union by violence, but here the issue is joined. She comes forward in the person of her Presidential and Vice Presidential Electors, instead of that of her Representative; and she was thus presented in a shape as unquestionable as that of New York, Pennsylvania, Massachusetts, or the proudest and oldest State in the Union. She comes forward by her attorneys—her Electors. Will you deny them admittance? Will you thrust her Electors, and hers only, from this Hall? Mr. R. said his friend had not given to this subject the sort of consideration which he knew him to be capable of giving it. I made no objection, said Mr. R., to the votes of New Hampshire, Maine, or Vermont: I have had as good a right to object to the votes of New Hampshire, as the gentleman from New Hampshire has to object to the votes of Missouri. Who made thou, Cain, thy brother's keeper? Who put Missouri into custody of the honorable gentleman from New Hampshire? The Electors of Missouri are as much *homines probi et legales* as the Electors of New Hampshire. This, Mr. R. said, was no skirmish, as it had been called. This was the battle when Greek meets Greek; it was a conflict not to be decided between the phalanx and the legion, whether the impenetrability of the one or the activity of the other shall prevail. Let us buckle on our armor, said Mr. R.; let us put aside all this flummery, these metaphysical distinctions, these legal technicalities, these special pleadings, this dry minuteness, this unprofitable drawing of distinctions without difference; let us say now, as we have said on another occasion, we will assert, maintain,

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and vindicate our rights, or put to every hazard what you pretend to hold in such high estimation.

Mr. R. said he recollected perfectly well, in the celebrated election of Thomas Jefferson and Aaron Burr—they live, said he, illustrious examples of the merits of their respective partisans—what were we then told? Why, that we must withdraw our opposition, or there would be no election; that a dissolution of the Union impended; that volcanoes began to play; that earthquakes yawned beneath us; and, recollect, sir, we had a President in the chair who had a majority in this House, small as it was. He treated the idea of giving way with derision and scorn. We said we will not give way, and you must take the consequences. We appealed, said Mr. R., to the good sense of the nation; and I do now appeal to this nation, said he, whether this pretended sympathy for the rights of free negroes and mulattoes is to supersede the rights of the free white citizens, of ten times their whole number. They gave way, sir, said Mr. R.; the sheep is the most timid and helpless of all animals; it retreats before any attack is offered to it. The President of the United States, said Mr. R., possesses great powers and highly responsible functions, and should be looked up to with veneration and deference, because he is the Chief Magistrate of a people, legally appointed by their suffrages. But a President of the United States, appointed by the exclusion of the votes of those who are the same flesh and blood as ourselves—for the people of Missouri are not natives of Missouri, with the exception of a few French and still fewer Spaniards—is no more the Chief Magistrate of this country than that thing—that pageant, which the majorities of the two Houses proposed to set up just twenty years ago—a President made by law—no, by the form and color of law, against the principles of the Constitution, and in violation of the rights of the freemen of this country. Sir, said Mr. R., I would not give a button for him. On his personal account, and for his personal qualities, I might treat him with respect as an individual, but as Chief Magistrate of this country, he would be more odious to my judgment than one of the house of Stuart attempting to seat himself on the throne of England, in defiance of the laws of succession and of the opinion of the people. We have, I am afraid, so long basked in the impure atmosphere, not of this House, but of this Court, that—

Mr. CLAY here claimed the floor, which he had yielded to the gentleman only for the purpose of making an explanation.

Mr. RANDOLPH took his seat, saying that he would give way to the honorable gentleman in every thing but one.

Mr. CLAY said he really saw no difficulty in this business; and, before he sat down, should make a motion, with a view to put an end to this discussion. The House and Senate have, by a joint act, this day agreed, that, in the event of an objection being made to the vote of Missouri, her vote should be counted hypothetically; that the whole number should be announced, including the vote of Missouri, and that the number should also be stated

as it would be, the vote of Missouri being excluded; and, the result not varying, that it should be declared that, in either case, the person having the largest number of votes was duly elected. The motive which operated on the joint committee in recommending this course, and on the two Houses in adopting it, was to avoid the very difficulty into which the House was about to precipitate itself. It was an effort to provide, by previous arrangement, for the very contingency which has arisen. The moment the objection was made, in that instant the rule adopted this morning took effect. Mr. C. said it therefore appeared to him, with very great deference to the course of the presiding officer of the Senate, that he ought to have gone on, and, after the votes had been summed up, to have made the annunciation as proposed in the joint resolution adopted this morning.

The two Houses ought not, in the opinion of Mr. C., to have separated until they had consummated what had been stipulated for. He was now not willing to take up any proposition on this subject or any other, however unwilling he might have been to meet it at any other time. He was opposed to do so, because to do so is a violation of good faith between the two Houses, as pledged by the arrangement of this morning. He had not a doubt, he said, that Missouri might be admitted into the Union in a variety of ways, and very possibly, on proper examination, the mode now proposed might be one of them, by the two Houses, jointly or separately, giving her the exercise of a right which, as a State, would belong to her. The House, however, as well as the Senate, had virtually determined to get round that question to-day, and to put an end to any controversy which might arise in respect to it, in the manner contemplated by the second resolution passed this morning. Mr. C. therefore moved that the subject now under consideration be laid on the table, in order to resume the business which had been interrupted by the retirement of the Senate.

Mr. STORRS demanded the reading of the first resolution which passed this House, as compared with that which passed the Senate.

[Here took place an explanation of a variation which had taken place in the form of the resolve. As it came from the Senate the President of the Senate was to preside over the joint meeting. As reported by the committee on the part of this House the President of the Senate was to preside over the Senate, and the Speaker was to preside over the House of Representatives. This alteration was made, because it was known that the House of Representatives would not have agreed to the other course, and a collision might have arisen between the two Houses. It may be added, that the Senate were not aware, when they came into the Hall, of the change of the arrangement, but supposed it to stand, as they had voted it. Their retirement from the Chamber arose from the President of the Senate having learned these facts after he was seated in his place in the Hall. He would otherwise, it is supposed, have gone on to proclaim the result, immediately after Mr. LIVERMORE'S objection, as prescribed in the resolution.]

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Some conversation took place between Messrs. SMITH of Maryland, CLAY, RANDOLPH, NELSON of Virginia, FOOT, and COBB, as to the state in which matters would be, on the Senate's return. Some of the gentlemen contended that, on the Senate's return, matters would stand just as they did before, and the same difficulty as had already presented itself would again arise. Others contended, and the majority appeared to be with them, that, on the return of the Senate, the President would go on to declare the result, as directed in the second joint resolution of this morning.

Mr. LIVERMORE, in the course of these desultory remarks, took an opportunity to vindicate his conduct in offering the objection to the votes of Missouri. It was a duty necessary to be performed by somebody; having no wish to be forward in the business, he had endeavored to persuade several gentlemen to present it—but, they declining to do so, it had become his duty to do it, and in his opinion he had done it at the proper moment.*

The question was taken on Mr. CLAY's motion to lay Mr. FLOYD's resolution on the table, and decided in the affirmative, ayes 103. And then, on motion of Mr. Clay, it was ordered, that a message be sent to the Senate to inform that body that the House is now ready to receive the Senate in the Chamber of the House of Representatives, for the purpose of continuing the enumeration of the votes of the Electors for President and Vice President, according to the joint resolutions agreed upon between the two houses; and that the Clerk go with the said message.

The Clerk accordingly went with the said message; and he being returned—

The Senate again appeared, and took seats in the House as before.

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Messrs. Gales & Seaton :

In your report of the transactions in the House of Representatives on the 14th instant, you observe that "Mr. Livermore took an opportunity to vindicate his conduct in offering his objections to the votes from Missouri." But you omit the only circumstance which rendered any observations on his part necessary; for certainly the objection was in substance proper, and every member of Congress had a right to make it. The truth is, Mr. Smith, of Maryland, in the course of debate, said to this effect: that the abrupt departure of the Senate, and all the difficulty which ensued, ought to be imputed to the gentleman from New Hampshire, Mr. L., who made his objection *too soon, instead of waiting, as he should have done, till after the Missouri votes were counted.* In answer to this charge, Mr. L. made a few remarks, which you have not reported, but which probably convinced even Mr. Smith that the objection to counting the votes from Missouri was interposed at the proper moment.

A. D.

[Our correspondent is perfectly right. Mr. Livermore did not certainly vindicate the course he had taken, until it had been impugned by others. We were so cramped for room in our report, that we were obliged to generalize the incidental remarks, and, in doing so, perhaps a wrong impression may have been given to Mr. L.'s observations.]—*Editors National Intelligencer.*

The President of the Senate, in the presence of both Houses, proceeded to open the certificate of the Electors of the State of Missouri, which he delivered to the tellers, by whom it was read, and who registered the same.

And the votes of all the States having been thus counted, registered, and the lists thereof compared, they were delivered to the President of the Senate, by whom they were read, as already printed.

The President of the Senate then, in pursuance of the resolution adopted by the two Houses, proceeded to announce the state of the votes to the two Houses of Congress, in joint meeting assembled, as follows:

"Were the votes of Missouri to be counted, the result would be—For JAMES MONROE, of Virginia, for President of the United States, 231 votes: if not counted, for JAMES MONROE, of Virginia, 228 votes:—For DANIEL D. TOMPKINS, of New York, for Vice President of the United States, 218 votes: if not counted, for DANIEL D. TOMPKINS, of New York, for Vice President of the United States, 215 votes. But in either event, JAMES MONROE, of Virginia, has a majority of the votes of the whole number of Electors for President, and DANIEL D. TOMPKINS, of New York, has a majority of the votes of the whole number of Electors for Vice President of the United States."

The President of the Senate had proceeded thus far, or nearly thus far, in the proclamation, when Mr. FLOYD, of Virginia, addressed the Chair, and inquired whether the votes of Missouri were or were not counted.

Cries of Order! Order! were so loud as to drown Mr. FLOYD's voice.

[The President of the Senate had hesitated in the proclamation, on Mr. FLOYD addressing the Chair.]

Mr. RANDOLPH rose, and was addressing the Chair, when loud cries of Order! Order! resounded from many voices.

The SPEAKER pronounced Mr. RANDOLPH to be out of order, and invited him to take his seat.

Mr. BRUSH demanded that Mr. RANDOLPH should be allowed to proceed, and declared his determination to sustain his right to do so. Mr. B. was also loudly called to order.

Mr. FLOYD demanded of the Chair whether he was considered in order or not.

The SPEAKER determined that he was not in order at this time, the only business being at that present time that prescribed by the rule of this morning.

There was considerable murmuring at this decision; but order was restored; when the President of the Senate concluded his annunciation as follows:

"I therefore declare that JAMES MONROE, of Virginia, is duly elected President of the United States, for four years, to commence on the fourth day of March, 1821; and that DANIEL D. TOMPKINS, of New York, is duly elected Vice President of the United States, for the like term of four years, to commence on the said fourth day of March, 1821."

As the President concluded—

Mr. RANDOLPH addressed the Chair; but was required to take his seat.

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Proceedings.

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On motion by a member of the Senate, the Senate retired from the hall.

After they retired, and the House being called to order—

Mr. RANDOLPH, who had still retained the floor, was heard addressing the Chair. He spoke for some time, without being distinctly heard, owing to the confusion in the hall. He had, he said, seen every election of President of the United States, except that of the present Chief Magistrate, and he had never before heard any other form of proclamation than that such was the whole number of votes given in; that such a person, A or B, had so many, and was therefore elected President or Vice President of the United States. On this occasion no such annunciation had been made, and the presiding officer might just as well have said that James Claxton or Thomas Dunn was elected President of the United States. Were gentlemen to be put down by clamor and by force here for getting up to assert, not only their rights, but the rights of the whole people of the United States? Sir, said he, your election is vitiated; you have flinched from the question; you have attempted to evade the decision of that which was essential to the determination of who is and who is not elected Chief Magistrate of the United States. Mr. R. concluded his remarks by moving resolutions declaring the election to be illegal, &c. They were as follows:

1. *Resolved*, That the electoral votes of the State of Missouri have this day been counted, and do constitute a part of the majority of two hundred and thirty-one votes given for President, and of two hundred and eighteen votes given for Vice President.

2. *Resolved*, That the whole number of Electors appointed, and of votes given for President and Vice President, has not been announced by the presiding officer of the Senate and House of Representatives, agreeably to the provision of the Constitution of the United States, and that therefore the proceeding has been irregular and illegal.

Whilst Mr. R. was reducing his motion to writing, several gentlemen claimed the floor.

The SPEAKER determined that Mr. LATHROP was entitled to it; and Mr. L. moved to adjourn.

Mr. FLOYD claimed the right of the floor, as rising first, and demanded to be heard.

The SPEAKER affirmed Mr. LATHROP's right.

Mr. FLOYD was about appealing from the decision of the Chair, but did not.

Mr. RINGGOLD having demanded the yeas and nays on the question of adjournment, the question was taken accordingly, as follows:

YEAS—Messrs. Adams, Allen of Massachusetts, Allen of New York, Anderson, Baker, Bateman, Beecher, Boden, Buffum, Cannon, Case, Clagett, Clark, Clay, Cook, Crafts, Culpeper, Cushman, Cuthbert, Dane, Darlington, Dennison, Eddy, Edwards of Connecticut, Edwards of Pennsylvania, Fay, Folger, Foot, Forrest, Fuller, Gorham, Gross of New York, Gross of Pennsylvania, Guyon, Hackley, Hall of New York, Hardin, Hemphill, Hendricks, Herrick, Hibshman, Hill, Hobart, Hooks, Hostetter, Kendall, Kinsey, Kinsley, Lathrop, Lincoln, Livermore, Maclay, McCoy, McCullough, Mallary, Marchand, Meech, Meigs, Monnell, R. Moore. S. Moore, Morton, Moseley, Murray.

Nelson of Massachusetts, Parker of Massachusetts, Patterson, Phelps, Philson, Pitcher, Plumer, Rankin, Richards, Richmond, Robertson, Rogers, Ross, Russ, Sergeant, Silsbee, Sloan, Stevens, Street, Strong of Vermont, Strong of New York, Tomlinson, Tompkins, Tracy, Udree, Upham, Van Rensselaer, Wallace, Wendover, Whitman, and Wood—95.

NAYS—Messrs. Alexander, Allen of Tennessee, Archer of Maryland, Archer of Virginia, Baldwin, Barbour, Bayly, Bloomfield, Brevard, Brown, Brush, Bryan, Campbell, Cobb, Cocke, Crawford, Culbreth, Davidson, Earle, Edwards of North Carolina, Floyd, Garnett, Gray, Hall of North Carolina, Jackson, Johnson, Jones of Virginia, Little, McCreary, McLean of Kentucky, Mercer, Metcalf, T. L. Moore, Neale, Nelson of Virginia, Newton, Pinckney, Randolph, Reid, Rhea, Ringgold, Shaw, Simkins, Swearingen, Trimble, Tucker of Virginia, Tucker of South Carolina, Tyler, Williams of Virginia, and Williams of North Carolina—50.

THURSDAY, February 15.

Mr. NEWTON, from the Committee on Commerce, reported a bill to abolish certain ports of entry; to establish ports of delivery, and for other purposes; which was read twice, and committed.

Mr. SMITH, of Maryland, from the Committee of Ways and Means, reported a bill making appropriations for the naval service of the United States for the year 1821; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. ANDERSON, from the Committee on the Public Lands, to which was referred the bill from the Senate, entitled "An act for the relief of the purchasers of public lands prior to the first day of July, 1820," reported the same without amendment; and it was committed to the Committee of the Whole, to which is committed the bill regulating the payment of debts due from the purchasers of public lands.

Mr. EDWARDS, of North Carolina, waived for the present his intention to make a motion on the Missouri subject, according to his notice of yesterday, partly because he had little hope of success in the motion, and partly because it was probable some motion might be made more palatable to the House.

Mr. CLARK, of New York, submitted the following motion, accompanying it with some remarks in support of it:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States, in all respects whatsoever, on the first Monday in December next: *Provided*, That, previous to the said first Monday in December next, Missouri shall have expunged from her constitution the following clause, to wit: "It shall be the duty of the Legislature, as soon as may be, to pass laws to prevent free negroes and mulattoes from coming to or settling in this State, under any pretext whatever." And that on said day, certified copies of said constitution, so amended, shall be delivered to the President of the Senate and Speaker of the House of Representatives of the United States.