

Vice-President¹ having concluded the opening and presentation of returns, announced in response to an inquiry by Senator Edgar Cowan, of Pennsylvania, that he had in his possession returns from the States of Louisiana and Tennessee, but in obedience to the law the Chair held it to be his duty not to submit them to the joint convention. This law² was in the form of a joint resolution, and, while the official communication of the President's approval had not been received, the Chair had been apprised of the fact.

Mr. George H. Yeaman, of Kentucky, moved that all the returns before the joint convention be opened and presented for its consideration.

The Chair held that the motion was in order, being pertinent to the object for which the convention had assembled. It came within the latter clause of the joint resolution, which related to "any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner." The Member would reduce his motion to writing, so that the precise question should be in possession of the Senate when it should retire for the determination of the question presented for the consideration of the convention. Each House must determine the question in its own Chamber.

Mr. Nathan A. Farwell, of Maine, a Senator, raised the question of order that the question had already been decided by the two Houses of Congress in passing the joint resolution, which had been approved by the President.

The Vice-President said:

The fact of the approval of the President is within the knowledge of the Chair, and in consequence of that knowledge the Chair has seen fit to withhold the returns of the States in question. There has been no official promulgation of that approval of the President. Still, in the opinion of the Chair, if either branch of Congress shall be disposed to order the returns now upon the table to be read, it is within their power to do so. The reading of the returns would be one thing; then would arise another question, whether the vote in the return so read should be added to the count of the tellers. In the opinion of the Chair the motion of the Member from Kentucky is in order.

Mr. Yeaman withdrew his motion.

Mr. John V. L. Pruyn, of New York, proposed a motion that the tellers be instructed not to count the votes of the so-called State of West Virginia.

The Vice-President quoted the rule as follows:

If upon the reading of any such certificate by the tellers, any question shall arise as to the counting of the votes therein certified, etc.,

said:

The question must be raised when the vote is announced. * * * The Member from New York should have made his motion, in order to come within the rule, at the time the tellers announced the vote of the State of West Virginia.

1949. Proceedings of the electoral count of 1869.

The President pro tempore held, during the electoral count of 1869, that under the terms of the then existing joint rule an objection to the counting of an electoral vote should be in writing and specific.

During the electoral count of 1869 the President pro tempore used his discretion about entertaining points of order, but declined absolutely to entertain appeals.

¹ Hannibal Hamlin, of Maine, Vice-President.

² 13 Stat. L., pp. 567, 568.

During the electoral count of 1869 the President pro tempore declined to entertain a resolution offered by a Member of the House.

During the electoral count of 1869 the President pro tempore ruled out of order a motion that the joint meeting adjourn, and after the announcement of the vote the Senate retired without motion.

A provision providing for an alternative announcement of the electoral vote of Georgia caused much disagreement in the electoral count of 1869.

On February 10, 1869,¹ the House and Senate met in joint convention for counting the electoral vote under the terms of the joint rule of 1865² and a special rule adopted for this count.³ The count had proceeded as far as the State of Louisiana when Mr. James Mullins, of Tennessee, objected to counting the vote of that State.

Mr. George W. Woodward, of Pennsylvania, a Representative, made the point of order that under the joint rule specific objection was required.

The President pro tempore⁴ of the Senate, who was the presiding officer, ruled that the objection should be in writing and should assign a reason therefor, in order to conform to the terms of the joint rule.

Mr. Charles A. Eldridge, of Wisconsin, a Representative, raised the question of order that the joint rule under which they were acting was in direct contravention of the terms of the Constitution.

The Presiding Officer declined to entertain the point of order.

The objection to the vote of Louisiana having been presented formally, the Senate retired. The two Houses having passed upon the objections the joint convention reassembled, and the Presiding Officer announced that the two Houses had acted concurrently and the vote of Louisiana would be counted.

¹ Third session Fortieth Congress, Journal, pp. 314, 320; Globe, pp. 1056, 1062.

² For form of this joint rule see section 1951 (footnote) of this work.

³ On February 8, 1869 (third session Fortieth Congress, Journal, pp. 303, 304; Globe, pp. 972, 976-978), the House and Senate agreed to the following concurrent resolution, based on the action taken in 1821, when there was doubt about the electoral vote of Missouri:

“Whereas the question whether the State of Georgia has become and is entitled to representation in the two Houses of Congress is now pending and undetermined; and whereas by the joint resolution of Congress, passed July 20, 1868, entitled ‘A resolution excluding from the Electoral College votes of States lately in rebellion which shall not have been reorganized,’ it was provided that no electoral votes from any of the States lately in rebellion should be received or counted for President or Vice-President of the United States until, among other things, such State should have become entitled to representation in Congress pursuant to acts of Congress in that behalf: Therefore,

“Resolved by the Senate (the House of Representatives concurring), That on the assembling of the two Houses on the second Wednesday of February, 1869, for the counting of the electoral votes for President and Vice-President, as provided by law and the joint rules, if the counting or omitting to count the electoral votes, if any, which may be presented as of the State of Georgia shall not essentially change the result. In that case they shall be reported by the President of the Senate in the following manner: Were the votes presented as of the State of Georgia to be counted, the result would be, for ——— for President of the United States ——— votes; if not counted, for ——— for President of the United States, ——— votes; but in either case ——— is elected President of the United States. And in the same manner for Vice-President.”

⁴ Benjamin F. Wade, of Ohio, President pro tempore.

The count then proceeded until the State of Georgia was reached. The certificates having been read, Mr. Benjamin F. Butler, of Massachusetts, a Representative, presented objections, in writing, to counting the vote of the State. These objections alleged that the vote was not cast on the day required by law, that the State had not been readmitted to representation, and that a fair election had not been held.

Mr. George F. Edmunds, of Vermont, a Senator, raised the point of order that the objection was not in order, since by special rule for the occasion arrangement had been made for the vote of Georgia.

The Presiding Officer said:

The Chair is very much disposed to hold the Senate and House of Representatives to their own concurrent resolution. * * * The resolution of the two Houses declared that the vote of Georgia should be announced by the President pro tempore in a certain special way, and stated how that announcement should be made. The Chair is very much disposed to obey the directions of both branches of Congress in this matter.

Mr. Butler proposed that this matter, being one of Constitutional law, should be considered, on appeal, to the House of Representatives.

The Presiding Officer announced that the Senate would retire. The Senate having been called to order,¹ there were presented propositions relating to the objections, one being that the vote should not be counted, another that it should be counted in accordance with the concurrent resolution of the 8th inst., etc. Finally, after discussion, the President pro tempore held that the Senate must proceed in accordance with the terms of the concurrent resolution. Thereupon Mr. George F. Edmunds, of Vermont, offered the following resolution, which was agreed to—yeas 37, nays 32.

Resolved, That under the special order of the two Houses respecting the electoral vote from the State of Georgia the objections made to the counting of the vote of the electors for the State of Georgia are not in order.

This resolution having been agreed to, the President pro tempore raised a question as to what announcement should be made to the joint convention, the two Houses not agreeing. Mr. Roscoe Conkling, of New York, having quoted these 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—

raised a question as to how the Chair could make the conditional announcement required by the terms of the concurrent resolution.

Thereupon Mr. Jacob M. Howard, of Michigan, offered this resolution:

Resolved, That the electoral vote of Georgia ought not to be counted.

A point of order was made that under the recent ruling of the President pro tempore the resolution was not in order.

The President pro tempore held that the resolution was in order, it not being for the Chair to decide whether or not the proposition was in conflict with previous action. An appeal having been taken the decision of the Chair was sustained—yeas 28, nays 25.

¹ Globe, pp. 1050-1055.

The resolution offered by Mr. Howard was then rejected—yeas 25, nays 34.

In the House of Representatives¹ the Speaker, after having announced and had read the objection, put the question: "Shall the vote of Georgia be counted, notwithstanding the objection of the gentleman from Massachusetts?"

Mr. Charles A. Eldridge, of Wisconsin, raised the question of order that the Presiding Officer had ruled to hold the Joint Convention to the order made by concurrent action of the two Houses, and that the two bodies had separated on the point of order raised by the gentleman from Kentucky, Mr. Jones.

The Speaker said:

The Chair overrules the point of order. Questions in regard to the decision of the President of the convention of the two Houses must be submitted to that officer when occupying the chair in that capacity. The point upon which the two Houses separated was the objection of the gentleman from Massachusetts.

Mr. John F. Farnsworth, of Illinois, made the point of order that the joint [concurrent] resolution of the two Houses was of higher authority and a later rule than the one ordering that question to be put.

The Speaker said:

The Chair overrules the point of order on the ground that the concurrent resolution devolves no duty on the Speaker of the House at all. It devolves a duty on the President of the Senate in presiding over the joint meeting of the two Houses. * * * It devolves no duty on the Speaker or upon the House of Representatives in its capacity as the House.

Mr. Michael C. Kerr, of Indiana, as a parliamentary inquiry, asked if the propositions submitted by the gentleman from Massachusetts as his objection were capable of division and separate votes.

The Speaker held that they were not.

The question being then taken, it was voted, yeas 41, nays 150, that the vote of Georgia should not be counted.

1950. Proceedings of the electoral count of 1869, continued.

The two Houses having separated for action on an objection during the electoral count of 1869, the House announced to the Senate, by message, its decision.

Disorder arising in the joint meeting during the electoral count of 1869, the Speaker called Members of the House to order and directed the Sergeant-at-Arms to assist.

Mr. Speaker Colfax presided with the President pro tempore at the electoral count of 1869, although he was ascertained by that count to be the Vice-President-elect.

Mr. Speaker Colfax left the chair to participate in debate on a question arising out of the electoral count of 1869.

A proposition in the Senate to censure a Member of the House for conduct in the joint meeting to count the electoral vote.

The Speaker announced that a message would be sent to the Senate informing that body of the action of the House.

¹ Journal, p. 315; Globe, pp. 1058, 1059.

When the joint convention reassembled¹ the President pro tempore, having resumed the chair, said:

The objections of the gentleman from Massachusetts are overruled by the Senate, and the result of the vote will be stated as it would stand were the vote of the State of Georgia counted, and as it would stand if the vote of that State were not counted, under the concurrent resolution of the two Houses.

Mr. Benjamin F. Butler, of Massachusetts, proposed to submit a resolution.

The President pro tempore said:

The Chair declines to receive the resolution. The tellers will make out the statement of the vote as directed.

Mr. Butler appealed and the Chair declined to entertain the appeal. Mr. Butler, having, amid much confusion, insisted on his appeal, the Chair said:

The Chair has decided that an appeal can not be entertained in the joint convention.

Being questioned as to his authority for declining to entertain an appeal, the Chair said:

We are proceeding under a concurrent resolution of both bodies which has declared how the counting and announcement of the votes shall be proceeded with.

The President pro tempore proceeded to direct the tellers to report, after having ruled out of order a motion to adjourn, and having ignored a motion that the convention be dissolved. The confusion became so great that the Speaker of the House, from his place beside the President pro tempore, said:

The Speaker of the House appeals to Members of the House to preserve order. The Sergeant-at-Arms of the House will arrest any Member refusing to obey the order of the President of this convention.²

The state of the vote was then announced as provided by the terms of the concurrent resolution.³

The President pro tempore then announced that the Senate would retire.

As soon as the Senate had retired, Mr. Benjamin F. Butler, of Massachusetts, rising to a question of privilege, offered a resolution which he subsequently modified to read as follows:

Resolved, That the House protests against the manner of procedure and the order of the President of the Senate pro tempore, in presence of the two Houses, in counting the vote of Georgia in obedience to the order of the Senate only, and against his acts dissolving the convention and the two Houses at his own will as an invasion of the rights and privileges of this House.

Resolved, That the above resolution be, and hereby is, referred to a select committee of five, with leave to report at any time, and report by bill or otherwise.

A long debate⁴ arose, in the course of which the Speaker, who left the chair to participate, said:⁵

It is impossible in a joint convention that there should be an appeal from the ruling of the Chair, because it could not be entertained by the presiding officer. There never has been an appeal in any joint convention of Congress. It might have been provided for in the rules, but has been omitted.

¹ Globe, pp. 1062, 1063.

² The Speaker was Mr. Colfax, who was also the Vice-President declared elected by this count.

³ Journal, p. 320; Globe, p. 1063.

⁴ Globe, pp. 1064-1067, 1094-1107, 1144-1148.

⁵ Globe, p. 1067.

* * * There can be no appeal on a point of order in a joint convention of the two Houses for the reason that the Senate, representing the States, and the House of Representatives representing the people of the United States, the convention is made up of different persons, each body representing the same number of people, but by different numbers and in different ways.

Finally, on February 12,¹ the subject was laid on the table, yeas 130, nays 55.

In the Senate, on February 11,² Mr. Garrett Davis, of Kentucky, proposed in the Senate a concurrent resolution censuring Mr. Butler, but it does not seem to have been acted on.

1951. Proceedings of the electoral count of 1873.

When an objection is raised to the counting of the electoral vote of a State in the joint meeting, two copies are made of the objection, one for use of the House and the other for the Senate.

During the electoral count of 1873 the joint meeting made, by unanimous consent, orders relating to the reading of the certificates and the consideration of objections.

During the electoral count of 1873 the objection to the vote of Georgia was, by unanimous consent, reserved until objection was made to the vote of Mississippi, when the Houses separated and considered the two.

When, during the electoral count of 1873, the two Houses separated to consider objections, the Vice-President, who had custody of the documents, left with the House duplicates of the electoral certificates.

The former joint rule providing for the electoral count. (Footnote.)

In a message in 1865 the President of the United States disclaimed all right of interfering with the canvassing or counting of the electoral votes. (Footnote.)

On February 12, 1873,³ the House directed its Clerk to inform the Senate that it was ready to receive that body for the purpose of proceeding to open and count the electoral votes. This was the last count to take place under the twenty-second joint rule.⁴ The formalities of assembling being over, by unanimous consent of

¹ Journal, p. 335; Globe, p. 1148.

² Globe, p. 1069.

³ Third session Forty-second Congress, Journal, p. 374; Globe, p. 1294.

⁴ The twenty-second joint rule provided: "The two Houses shall assemble in the Hall of the House of Representatives at the hour of 1 o'clock p. m., on the second Wednesday in February next succeeding the meeting of the electors of President and Vice-President of the United States, and the President of the Senate shall be the presiding officer; one teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes; and said tellers, having read the same in the presence and hearing of the two Houses thus assembled, shall make a list of the votes as they shall appear from the said certificates; and the votes having been counted the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote and the names of the persons, if any, elected, which announcement shall be deemed a sufficient 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.

"If, upon the reading of any such certificate by the tellers, any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such question to the House of