JOURNAL

OF

THE SENATE OF TEXAS:

BEING THE

SESSION OF THE THIRTEENTH LEGISLATURE

BEGUN AND HELD

AT THE CITY OF AUSTIN,

JANUARY 14, 1873.

AUSTIN,
JOHN CARDWELL, STATE PRINTER.
1873.

Senator Dohoney offered the following resolution, which was adopted:

Resolved, That the Committee on Constitutional Amendments be requested to inquire into and report to the Senate whether there is a necessity for amending the present State Constitution; and if so, the best manner of doing so. Whether such amendments as may be necessary can likely be satisfactorily secured by submitting the same to a vote of the people, as prescribed by the Constitution; and if not, to inquire into the necessity and propriety of calling a constitutional convention for that purpose, and report to the Senate at an early day.

Adopted.

Senator Saylor offered the following resolution:

WHEREAS, On the seventeenth day of the present month of January, Wells Thompson, Esquire, presented to the Senate a memorial, in which he claimed the right to the seat in the Senate now occupied by Hon. R. P. Tendick, and prayed an inquiry by the Senate into the circumstances and facts of the election held in the Twenty-fifth Legislative District, on the twenty-eighth, twenty-ninth and thirtieth days of November, and the first day of December, 1870; and

Whereas, The memorial of the said Wells Thompson, Esquire, was referred by the Senate to the Committee on Privileges and Elections; and,

Whereas, The said R. P. Tendick appeared before said committee and excepted to the right of the said Wells Thompson, Esquire, at this time to contest his right to the representation of the Twenty-fifth Legislative District in the Senate of the State; and,

Whereas, The said committee overruled the exception of the said R. P. Tendick, and determined to proceed to

enquire into the regularity and fairness of the election held on the said twenty-eighth, twenty-ninth and thirtieth days of November, and on the said first day of December, 1870; and,

Whereas, The facts are that the returning officers of the said election declared the said Tendick to have been duly elected, to represent the said Twenty-fifth District in the Senate of the State, and the said Tendick took his seat in the Senate on the tenth day of January, 1871, and served until the thirty-first day of May, 1871, and again took his seat in the Senate on the twelfth day of September, 1871, and served until the second day of December, 1871, at which time the term of the members of the Twelfth Legislature expired; and during all this time the said Wells Thompson, Esquire, gave no notice to the Senate of any intention to contest the seat of the said R. P. Tendick; therefore be it

Resolved by the Senate of the State of Texas, That Wells Thompson, Esquire, has no right at this time to contest the seat of the Hon. R. P. Tendick, and that the Committee on Privileges and Elections be, and is hereby discharged from any further consideration of the memorial of the said Wells Thompson, Esquire.

Senator Pyle moved that the resolution be made special order of the day for Saturday next.

Senator Dohoney moved that the resolution be referred to the Committee on Privileges and Elections, which was lost by the following vote:

Yeas—Senators Avinger, Ball, Broughton, Cole, Dillard, Dohoney, Evans, Finlay, Henry, King, Latimer, Sayers, Shelley, Swift and Mr. President—15.

Nays—Senators Baker, Ford, Flanagan, Fountain, Franks, Gaines, Hall, Pyle, Rawson, Randall, Ruby, Saylor, Tendick, Tracy and Word—15.

Senator Shelley moved to lay the resolution on the table, which was lost by the following vote:

Yeas—Senators Avinger, Ball, Dillard, Dohoney, Evans, Finlay, Henry, King, Latimer, Sayers, Shelley, Swift, Word and Mr. President—14.

Nays—Senators Baker, Broughton, Cole, Ford, Flanagan, Fountain, Franks, Gaines, Hall, Pyle, Rawson, Randall, Ruby, Saylor, Tendick and Tracy—16.

Senator Saylor moved to make the resolution a special order for Monday next.

Senator Shelley moved to amend by substituting "Tuesday" in lieu of "Monday," which was adopted.

The resolution was made special order for Tuesday next, at 11 o'clock A. M.

Committee on Privileges and Elections.—Senators Dillard, Word, King, Saylor, Rawson.

Committee on Privileges and Elections made the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: The Committee on Privileges and Elections have had under consideration the memorial of Wells Thompson, Esq, contesting the seat of the sitting member of this body, the Hon. R. P. Tendick, of the Twenty-fifth District, and beg leave to report that the committee met on the twenty-first day of January, and the parties appeared before the committee in person and by counsel.

The sitting member, by his counsel, presented a protest in the nature somewhat of a demurrer, protesting against the power or authority of the committee to inquire into the validity of his election, because he, the sitting member, had been declared elected, and had taken his seat in the Senate at the several sessions of the Twelfth Legislature, and again at the present session of the Thirteenth Legislature, concluding his protest as follows: "Wherefore respondent says, that the said Wells Thompson has no right and no authority of law, at this time, to question respondent's right to a seat," etc.

The committee, after considering the protest and the law upon which the same was based, to-wit, the act of 1848 (Paschal's Digest Articles 3607 and 3610), overruled the protest, and proposed to proceed with the examination of the facts in the case.

From this decision of the committee the sitting member, by his counsel, protested, and prayed an appeal to the Senate. The committee overruled the protest and refused the appeal.

Whereupon the sitting member and his counsel withdrew from the committee, the counsel stating they would introduce no proof, nor again appear before the committee.

It is also proper to state that one of the members of the committee, to-wit, the Hon. Henry Rawson, failed to attend the committee during any of its subsequent sittings after the withdrawal of the sitting member. The committee, thus reduced in number, proceeded to hear the evidence produced by the memorialist.

The undersigned members of the committee, being a majority, came to the conclusion, after careful examination, that the election law of 1848, by which contested elections were to be governed and the mode of prosecuting such contests pointed out, was repealed by the law of 1870 on the subject of elections (Section 60, Acts 1870, page 139); and there being no mode pointed out in the law of 1870 for contesting elections, the committee acted under the provision of the Constitution, Article 3, Section 15, and under such rules and precedents as seemed to be analogous and applicable to the case before them.

And although that section seems to contemplate that there should be some law pointing out the manner in which contested elections are to be determined, and the committee being of the opinion that no mode has been pointed out by the Legislature, they yet cannot concede that the Senate has not the power to inquire into the integrity of its own body, and to see that each member holds his seat by a fair expression of the will of a majority or plurality of the voters in his district, uncontaminated by fraud, intimidation or force.

The undersigned therefore invite the attention of the Senate to the testimony produced before the committee, and upon which they have acted, and the conclusion at which they have arrived from that proof.

And first they will notice the irregularities in relation to the registration, preceding the election of 1870, in the counties composing the twenty-fifth district.

And first on this point is the deposition of J. P. Harris, Exhibit A, page one, where witness states: "I belonged to the Republican party in 1870, and am still a member of that party, and am now a private in the State police force under appointment from Governor E. J. Davis."

"In the special election for State Senator from this district, in 1870, Geo. S. Ziegler was the registrar in the

county of Colorado, but he left the matter entirely with one M. S. Morrow, a stranger, etc., who registered the voters and issued the certificates previous to the election."

On page four, of the same deposition, the same witness states that he was present during the most of the registration, and that "M. S. Morrow did issue a great many certificates of registration signing the name of Geo. S. Ziegler thereto, and these names were entered upon the registration books." This testimony is corroborated by the deposition of Geo. S. Ziegler, the registrar of Colorado county. (See the testimony of the Hon. G. W. Smith, and also the deposition of J. R. Fleming.)

From these depositions it appears that the man named Morrow, having no legal or valid authority to issue certificates of registration, or register the names of the persons as voters, did act as registrar, and did issue certificates of registration and place the names on the register of voters. And by the deposition of J. R. Fleming, it is shown that these persons so unlawfully registered did vote at the election in Colorado county in 1870.

It is not clearly stated, if at all, for whom these persons voted, but it does appear that many of them voted more than once.

Your committee would next invite the attention of the Senate to the irregularities and illegalities permitted and practiced during the election which followed this registration, in Colorado county. The deposition of J. R. Fleming, on page six, shows that at the election of 1870, in Colorado county, "until eleven or twelve o'clock of the first day of the election, none of the certificates were stamped with the word 'voted,' dates and place of voting, as required by law. There was some two hundred, or two hundred and fifty votes cast before twelve, most of them being the striped or card back tickets, and they were voted by freedmen, very few white men voting before that time."

It further appears from the same deposition, page eight, that "all persons who presented their certificates were allowed to vote, and their names were added to the poll book by Morrow, who wrote them down with a pencil."

It appears further from the same deposition, page fourteen, that "the judges, or a majority of them, acting under the suggestion of the said Morrow, allowed persons to vote who presented themselves without certificates,

without swearing them as to their identity or the loss of their certificates."

And this is the same man Morrow who is above referred to, as acting as registrar without any proper or legal authority.

The depositions of the following deponents, to-wit, W. J. Darden, George Metz, D. H. Crisp, W. S. Delany, and Stephen Herbert, show, that of the persons proved by the testimony of J. R. Fleming to have been registered, and to have voted, a number were minors.

The undersigned have thus far confined their report to the irregularities in the registration and voting in the county of Colorado.

As to the irregularities in the registration in Lavaca county, there is no testimony before the Committee.

The undersigned would therefore invite the attention of the Senate, not to the *irregularities*, but to the *frauds* perpetrated in the voting at the said election in Lavaca county.

The testimony of J. P. Harris shows that there were certificates of registration prepared with fictitious names, amounting to a large number; that he saw colored voters go to Beaumont and Shoemaker, the latter being a candidate for the Lower House, and get these spurious certificates, and then go to the polls, and vote for the sitting member, and then return and get another spurious certificate with another name on it and go to the polls and vote again; that he saw the same person vote again and again, as often as from one to twenty times, under these spurious registration papers.

This witness states, that he knows as many as two hundred of these fraudulent votes, under these fictitious certificates, were cast for the sitting member.

The sitting member and his counsel having withdrawn from the committee, and declined to produce before the committee any testimony, and relying upon the lapse of time intervening between the election and the present session of the Senate as a bar to any inquiry concerning his right to his seat, it is proper to state, that the main facts constituting the fraud in the election did not come to the knowledge of contestant until the latter part of the summer of 1872, and a few days preceding the election of November and December, 1872.

The undersigned are of the opinion, and so report, that the Senate is a continuous body, two-thirds of the members continuing in office while one-third go out every two years.

The sitting member being one of those comprising the two-thirds of the present Senate, and having yet two years to serve, his right to a seat in the Senate may be inquired into at any time during his term of office; and the undersigned have proceeded to inquire into the fairness or unfairness of the election under which the sitting member claims his seat. And from the certified report of the Secretary of State, hereto attached, it appears the sitting member received 1762 votes, and the contestant received 1628 votes, showing a majority in favor of the sitting member of 134 votes.

The testimony before the committee, extracts from which are embodied in this report, all of which is herewith reported, but not made a part of this report, show that the sitting member received two hundred fraudulent and spurious votes in the county of Lavaca, showing a majority of sixty-six votes in favor of the contestant, against the fairness of whose election no evidence has been produced before the committee. Add to this the strong presumption arising from the number of colored votes, who voted before 12 o'clock on the first day of the election in Colorado county, and whose registration papers were not stamped as voted, and the further fact of the number of colored minors who voted in Colorado county in that election, and the irregularities in the registration in that county, the undersigned come to the conclusion that the majority of the contestant would greatly exceed the number of sixty-six as above stated.

They therefore respectfully report to your honorable body the following resolution, and recommend its adoption, to-wit:

That the sitting member, the Hon. R. P. Tendick, obtained his certificate of election by unfair and fraudulent means, and is not entitled to retain his seat; and that the said Wells Thompson, Esq., the contestant, did receive, at the said election, a majority of all the votes fairly polled, and is entitled to a seat in your honorable body.

All of which is respectfully submitted.

J. E. DILLARD, Chairman.
T. J. WORD,
HENRY C. KING.

Senator Dillard moved a suspension of the rule to consider the report. Carried.