

HINDS' PRECEDENTS  
OF THE  
HOUSE OF REPRESENTATIVES  
OF THE  
UNITED STATES

INCLUDING REFERENCES TO PROVISIONS  
OF THE CONSTITUTION, THE LAWS, AND DECISIONS  
OF THE UNITED STATES SENATE

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Clerk at the Speaker's Table

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# Chapter LVIII.\*

## PROCEDURE OF THE ELECTORAL COUNT.

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1911. The provisions of the Constitution relating to the appointment of presidential electors.

No Senator or Representative or person holding an office of trust or profit under the United States may be appointed an elector.

The Constitution, in section 1 of Article II, provides:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress;<sup>2</sup> but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

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\* See Volume VI, Chapter CXC.

<sup>1</sup> A proposition relating to the electoral count presents a question of privilege. Sections 2573-2575 of this volume.

<sup>2</sup> The Revised Statutes provide as follows:

"Sec. 131. Except in case of a presidential election prior to the ordinary period, as specified in sections one hundred and forty-seven to one hundred and forty-nine, inclusive, when the offices of President and Vice-President both become vacant, the electors of President and Vice-President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice-President.

"Sec. 132. The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice-President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

"Sec. 133. Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

"Sec. 134. Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

1912. Section 1 of Article II of the Constitution provides:

The Congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.<sup>1</sup>

**1913. Provisions of the Constitution for the choice of President and Vice-President by the electors; for the electoral count, and for elections in House and Senate in default of choice by the electors.**—The twelfth amendment to the Constitution, proclaimed as ratified September 25, 1804, provides:

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.<sup>2</sup>

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<sup>1</sup> The Revised Statutes provide:

"SEC. 135. The electors for each State shall meet and give their votes upon the first Wednesday in December in the year in which they are appointed, at such place, in each State, as the legislature of such State shall direct."

<sup>2</sup> Originally the Constitution provided as follows:

"The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. 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. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in chusing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice-President."

This paragraph was superseded in 1804 by the twelfth amendment.

1914. The statutes designate the time for the choice of electors of President and Vice-President, and the time for their meeting to give in their votes.

A controversy in any State over the appointment of Presidential electors settled in accordance with a law of that State six days before the time for the meeting of the electors shall not be a cause of question in the counting of the electoral vote by Congress.

The act<sup>1</sup> approved February 3, 1887,<sup>2</sup> provides:

That the electors of each State shall meet and give their votes on the second Monday in January next following their appointment,<sup>3</sup> at such place in each State as the legislature of such State shall direct.

SEC. 2. That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

1915. The executive of each State is charged with the duty of transmitting to the Secretary of State of the United States a certificate of the appointment of electors and the names and votes; and of delivering a similar certificate to the electors.

It is the duty of the executive of any State wherein there may be a controversy as to the appointment of electors to transmit to the Secretary of State of the United States a certificate of the determination thereof.

The Secretary of State is required to transmit to Congress copies of certificates received from the State executives relating to the appointment of Presidential electors.

The act approved February 3, 1887<sup>2</sup> provides:

That it shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors<sup>4</sup> in such State, by the final ascertainment under and in pursuance of the

<sup>1</sup> This is the act providing for the conduct of the electoral count. For the debates and proceedings on its adoption see first session Forty-ninth Congress, Record, pp. 815, 863, 1019, 1057, 2387, 2427; second session, pp. 29, 45, 74, 668.

<sup>2</sup> 24 Stat. L., p. 373.

<sup>3</sup> The law of 1845 (5 Stat. L., p. 721) provided an uniform day of election for appointment of electors, "the Tuesday next after the first Monday in November, in every fourth year." An old law of 1792 (1 Stat. L., p. 240) provided for a special election in case of vacancies in both offices, but this was repealed by the act of 1886 (24 Stat. L., p. 1), which provided for succession down through the cabinet, and the calling of an extra session of Congress.

<sup>4</sup> "The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice-President to be chosen come into office; except that when no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives." (Sec. 132, R. S.) The States may provide by law for filling vacancies; and the electors for each State meet at such place as the legislature may direct and give their votes on the first Wednesday in December in the year in which they are appointed. (Secs. 133-135, R. S.)

laws of such State providing for such ascertainment, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by the preceding section to meet, the same certificate, in triplicate, under the seal of the State; and such certificate shall be inclosed and transmitted by the electors at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President; and section one hundred and thirty-six of the Revised Statutes is hereby repealed; and if there shall have been any final determination in a State of a controversy or contest as provided for in section two of this act, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such determination, in form and manner as the same shall have been made; and the Secretary of State of the United States, as soon as practicable after the receipt at the State Department of each of the certificates hereinbefore directed to be transmitted to the Secretary of State, shall publish, in such public newspaper as he shall designate, such certificates in full; and at the first meeting of Congress thereafter he shall transmit to the two Houses of Congress copies in full of each and every such certificate so received theretofore at the State Department.

**1916. The statutes provide for transmitting the certificates of the action of the electors in each State to the President of the Senate.**

Section 138 of the Revised Statutes provides:

The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

Sections 139 and 140 provide for the sealing, certifying, and transmitting of these certificates, two of the three copies being sent to the President of the Senate, one by messenger and the other by mail, while the third is delivered to the judge of the district in which the electors assemble.

**1917. Certificates of the votes of the electors in the several States for President and Vice-President are transmitted to the President of the Senate, who may in case of delay send for them.—The act of October 19, 1888,<sup>1</sup> provides:**

That the certificates and lists of votes for President and Vice-President of the United States, mentioned in chapter one of title three of the Revised Statutes of the United States, and in the act to which this is a supplement,<sup>2</sup> shall be forwarded, in the manner therein provided, to the President of the Senate forthwith after the second Monday in January, on which the electors shall give their votes.

SEC. 2. That section one hundred and forty-one of the Revised Statutes of the United States is hereby so amended as to read as follows:

"SEC. 141. Whenever a certificate of votes from any State has not been received at the seat of Government on the fourth Monday of the month of January in which their meeting shall have been held the Secretary of State shall send a special messenger to the district judge in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of Government."

**1918. The electoral count occurs in the Hall of the House at 1 p. m. on the second Wednesday of February succeeding every meeting of electors.**

<sup>1</sup> 25 Stat. L., pp. 613, 614.

<sup>2</sup> See section 1916 of this volume.

The President of the Senate is the presiding officer of the joint meeting for the count of the electoral votes.

Two tellers are appointed on the part of each House to tabulate the votes in the electoral count.

At the conclusion of the electoral count the President of the Senate merely announces the state of the vote, which, with the list of the votes, is entered on the Journals of the two Houses.

The certificates of electoral votes are presented to the joint meeting in alphabetical order of States, and on being read are subject to objection in writing signed by at least one Member and one Senator.

In case of objection to an electoral certificate, or in case of conflicting certificates, the Senate retires and the two Houses consider the matter separately.

The act approved February 2, 1887,<sup>1</sup> provides:

Sec. 4. That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors.<sup>2</sup>

The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer.<sup>3</sup>

Two tellers<sup>4</sup> shall be previously 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, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote,<sup>5</sup> which announcement shall be deemed a sufficient declaration of the persons, if any, 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.

Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision, and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision, and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 3 of this act from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they

<sup>1</sup> 24 Stat. L., pp. 373, 374.

<sup>2</sup> From act of 1792, 1 Stat. L., p. 240.

<sup>3</sup> From the temporary act of January 29, 1877, to govern the electoral count of that year. (19 Stat. L., p. 227.) Also from the joint rule of 1865. (See sec. 1951, footnote, of this work.)

<sup>4</sup> From act of 1877 and joint rule of 1865; but there had been tellers from the earliest count. (See sec. 1928 et seq. of this work.)

<sup>5</sup> In the law of 1877 the words "state of the vote" were followed by the words "and the names of the persons, if any, elected." These words were also included in the bill of 1887 as it passed the Senate, but were stricken out in the House. (Second session Forty-ninth Congress, Record, pp. 29, 76.) These words were in the joint rule of 1865 and in earlier joint rules. (See sec. 1951 of this volume.)

agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

If more than one return or paper purporting to be a return<sup>1</sup> from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 2<sup>2</sup> of this act to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 2 of this act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws, and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

**1919. The statutes give directions for seating the officers and Members of the two Houses at the counting of the electoral vote.**

**The statutes prescribe directions as to recesses and adjournments of the joint meeting and the two Houses during the count of the electoral vote.**

The act approved February 2, 1887,<sup>3</sup> providing the method of conducting the electoral count, prescribes:

That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform.<sup>4</sup>

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.<sup>5</sup>

<sup>1</sup> The act of 1877 provided the electoral commission for decision in such cases. (19 Stat. L., p. 228.) The joint rule of 1865 and prior joint rules had not made definite provision in this respect.

<sup>2</sup> See section 1914 of this chapter.

<sup>3</sup> 24 Stat. L., p. 375.

<sup>4</sup> This provision as to the seating of the two Houses is taken from the act of 1877 (19 Stat. L., p. 229) and the joint rule of 1865 (see sec. 1951, footnote, of this work), which in turn continued prior usage.

<sup>5</sup> The provision as to recesses is a more specific provision than that of the law of 1877 or the joint rule of 1865, from both of which it is adopted.

**1920.** The rule for the seating of officers and Members at a joint session of the two Houses for counting the electoral vote.—The former joint rule of the House and Senate No. 22,<sup>1</sup> dating from February 6, 1865, provided that at the joint session of the two Houses in the Hall of the House for counting the electoral vote seats should be provided as follows:

For the President of the Senate, the Speaker's chair; for the Speaker, a chair immediately upon his left; for the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not occupied by the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon either side of the Speaker's platform.

The electoral act of 1877<sup>2</sup> embodied the above provisions, as does also the existing electoral law in substantially identical language with the above.<sup>3</sup>

**1921.** The President of the Senate preserves order in the joint meeting for the count of the electoral vote.

In the joint meeting for the count of the electoral vote no debate is allowed, and no question is put by the presiding officer except to either House on a motion to withdraw.

The act approved February 2, 1887,<sup>4</sup> providing for the conduct of the electoral count, specifies:

SEC. 5. That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.<sup>5</sup>

**1922.** When the two Houses separate to pass on a question arising during the electoral count, there may be two hours of debate, each Member or Senator being confined to five minutes.—The act approved February 2, 1887,<sup>3</sup> establishing a rule for the electoral count, provides:

SEC. 6. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.<sup>6</sup>

**1923.** When the two Houses separate to pass on an objection to counting an electoral vote, the message that the House is ready to receive the Senate again is sometimes sent by the Clerk without special direction.—On February 12, 1873,<sup>7</sup> during proceedings in the House incident to the determination of objections made in the joint convention to the electoral votes of

<sup>1</sup> Journal, second session Forty-fourth Congress, p. 723.

<sup>2</sup> Second session Forty-fourth Congress House Report No. 108, p. 6; 19 Stat. L., p. 229.

<sup>3</sup> 24 Stat. L., p. 375.

<sup>4</sup> 24 Stat. L., p. 374.

<sup>5</sup> This is a modified form of the provision of the temporary act of 1877 (19 Stat. L., p. 229). The joint rule of 1865 had provided that the President of the Senate should be the presiding officer. (See section 1951, footnote, of this work.)

<sup>6</sup> This provision is taken from the temporary law of 1877 (19 Stat. L., p. 229); but that act provided ten minutes as the limit of debate, instead of five. The joint rule of 1865, while providing for separate action, did not prescribe a rule as to the method of action. (See sec. 1951, footnote, of this work.)

<sup>7</sup> Third session Forty-second Congress, Globe, p. 1301.



the State of Texas, Mr. Henry L. Dawes, of Massachusetts, moved that copies of the resolutions adopted by the House be communicated forthwith to the Senate.

And to this Mr. James A. Garfield, of Ohio, suggested the additional provision that the Senate be informed that the House was ready to receive them.

The Speaker<sup>1</sup> said:

The Clerk intimates that there is no necessity for the order suggested by the gentleman from Ohio. The Clerk makes that notification as a matter of course. \* \* \* If the House has acted on all the business coming from the joint convention the presumption is that the House is ready to receive the Senate.<sup>2</sup>

**1924. The House, by formal resolutions, declared that there was no power in Congress or elsewhere to revise or change the result arrived at in the joint meeting for counting the electoral vote of 1877.**—On June 14, 1878,<sup>3</sup> Mr. Horatio C. Burchard, of Illinois, offered the following preamble and resolution, which were agreed to under suspension of the rules, there being yeas 216, nays 21:

Whereas, at the joint meeting of the two Houses of the Forty-fourth Congress, convened pursuant to law and the Constitution, for the purpose of ascertaining and counting the votes for President and Vice-President, for the term commencing March 4, 1877, upon counting the votes, Rutherford B. Hayes was declared to be elected President and William A. Wheeler was declared elected Vice-President for such term: Therefore,

*Resolved*, That no subsequent Congress and neither House has jurisdiction to revise the action of such joint meeting, and any attempt by either House to annul or disregard such action, or the title to office arising therefrom, would be revolutionary, and is disapproved by this House.

**1925.** On June 14, 1878,<sup>4</sup> the House, by a vote of 235 yeas to 14 nays, agreed to the following resolution reported from the Committee on the Judiciary:<sup>5</sup>

*Resolved*, That the two Houses of the Forty-fourth Congress, having counted the votes cast for President and Vice-President of the United States, and having declared Rutherford B. Hayes to be elected President and William A. Wheeler to be elected Vice-President, there is no power in any subsequent Congress to reverse that declaration, nor can any such power be exercised by the courts of the United States or any other tribunal that Congress can create under the Constitution.

**1926. The copies of the electoral votes transmitted to House and Senate in accordance with the law are not among the papers essential at the count.**—On December 6, 1888,<sup>6</sup> the Senate discussed the disposition of the

<sup>1</sup> James G. Blaine, of Maine, Speaker.

<sup>2</sup> Earlier in the proceedings the House had by vote directed these things to be done. *Globe*, p. 1299.

<sup>3</sup> Second session Forty-fifth Congress, *Journal*, pp. 1305, 1306; *Record*, p. 4618.

<sup>4</sup> Second session Forty-fifth Congress, *Journal*, p. 1307; *Record*, p. 4619.

<sup>5</sup> On June 14, 1878 (second session Forty-fifth Congress, *Record*, pp. 4618, 4619), the Judiciary Committee reported unanimously that, as the electoral vote had been counted by the two Houses of the Forty-fourth Congress, and had declared Hayes and Wheeler elected, "there is no power in any subsequent Congress to reverse that declaration, nor can any such power be exercised by the courts of the United States, or any other tribunal that Congress can create under the Constitution."

This was agreed to by the House, yeas 235, nays 14.

J. Proctor Knott, of Kentucky, dissented from the views of the Judiciary Committee, and submitted his views in the form of a long constitutional argument (second session Forty-fifth Congress, *Record*, p. 4682). B. F. Butler also dissented in a long argument (second session Forty-fifth Congress, *Record*, p. 4826).

<sup>6</sup> Second session Fiftieth Congress, *Record*, pp. 56, 1368.

copies of the official ascertainment of the electors of President and Vice-President, which in accordance with the law are transmitted to the Senate and House. The subject was referred to the Committee on Privileges and Elections, which, on January 31, 1889, through Mr. William M. Evarts, of New York, reported that these certificates had been transmitted in accordance with the law, the requirements of which were completely satisfied by the proceeding. The documents—

form no part of those that are by law provided for in respect of the transaction of the count of the votes.

The committee therefore recommended that the papers be deposited in the archives of the Senate.

**1927.** During the prolonged proceedings of the electoral count of 1877 the House and Senate caused each calendar day to be journalized as a legislative day.—On February 13, 1877,<sup>1</sup> the House and Senate agreed to the following:

*Resolved by the Senate (the House of Representatives concurring),* That during the sessions of the Commission appointed under the act to provide for and regulate the casting of votes for President and Vice-President and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, each calendar day when legislative business shall have been transacted shall, by each House, when in session, be considered a day for legislative purposes, and the Journals of the two Houses shall be so kept and dated.

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<sup>1</sup> Second session Forty-fourth Congress, Journal, p. 437; Record, pp. 1509, 1544.

## Chapter LIX.

### THE ELECTORAL COUNTS, 1789. TO 1873.

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1. Procedure at the first count. Section 1928.
  2. Practice from 1793 to 1813. Sections 1929-1934.
  3. The count of 1817. Section 1935.
  4. The count of 1821. Sections 1936, 1937.
  5. Counts from 1825 to 1833. Sections 1938-1940.
  6. The count of 1837. Section 1941.
  7. The counts from 1841 to 1853. Sections 1942-1945.
  8. The count of 1857. Section 1946.
  9. Counts of 1861 and 1865. Sections 1947, 1948.
  10. The count of 1869. Sections 1949, 1950.
  11. The count of 1873. Sections 1951, 1952.
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1928. Proceedings of the electoral count of 1789. The tellers on the part of the House for this count were appointed by resolution.

At the first electoral count the Senate elected a President pro tempore solely for that occasion.

An instance wherein a Member of the House was intrusted with a message to the Senate.

On April 6, 1789,<sup>1</sup> a message was received from the Senate, brought by Mr. Oliver Ellsworth, a Senator from Connecticut, as follows:

Mr. Speaker, I am charged by the Senate to inform this House that a quorum of the Senate is now formed; that a President is elected<sup>2</sup> for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready in the Senate Chamber to proceed, in the presence of this House, to discharge that duty. I have also in further charge to inform this House that the Senate has appointed one of its members to sit at the clerk's table to make a list of the votes as they shall be declared, submitting it to the wisdom of this House to appoint one or more of its members for the like purpose.

Mr. Elias Boudinot, of New Jersey, on the part of the House, informed the Senate that the House would attend.<sup>3</sup>

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<sup>1</sup> First session First Congress, Journal, pp. 7, 8 (Gales & Seaton ed.); Annals, pp. 17, 101.

<sup>2</sup> John Langdon, Senator from New Hampshire.

<sup>3</sup> Senate Journal, p. 8.

On motion it was

*Resolved*, That Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber for the purpose expressed in the message from the Senate; and that Mr. Parker and Mr. Heister be appointed on the part of this House to sit at the Clerk's table with the member of the Senate, and make a list of the votes as the same shall be declared.

The Speaker accordingly left the chair, and, attended by the House, withdrew to the Senate Chamber.

The Senate Journal says:<sup>1</sup>

The Speaker and House of Representatives attended in the Senate Chamber, for the purpose expressed in the message delivered by Mr. Ellsworth, and after some time withdrew.

The Senate proceeded by ballot to the choice of a President of their body pro tempore. John Langdon, esq., was duly elected.

The President elected for the purpose of counting the votes declared to the Senate that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States, which were as follows: [Here followed tabulation.]

Whereby it appears that George Washington, esq., was unanimously elected President, and John Adams, esq., was duly elected Vice-President of the United States of America.

### 1929. Proceedings at the electoral count of 1793.

In a case where the Vice-President was also the Vice-President-elect the Senate announced the election of a President pro tempore for the sole purpose of opening the certificates and counting the votes; but it does not appear certain that he acted.

On February 5, 1793,<sup>2</sup> in the House, it was—

*Resolved*, That a committee be appointed, to join such committee as may be appointed by the Senate, to ascertain and report the mode of examining the votes for President and Vice-President, and of notifying the persons who shall be elected of their election, and to regulate the time, place, and manner of administering the oath of office to the President.

Messrs. William Smith, of South Carolina; James Madison, of Virginia, and John Laurance, of New York, were appointed this committee on the part of the House. On the part of the Senate Messrs. Rufus King, of New York; Ralph Izard, of South Carolina, and Caleb Strong, of Massachusetts, were appointed on this committee.<sup>3</sup>

On February 11<sup>4</sup> the committee reported in both House and Senate the following arrangement, which was agreed to by both Houses, the Senate form differing from the House form in providing for one Senate teller, while the House tellers were two:

That the two Houses shall assemble in the Senate Chamber on Wednesday next, at 12 o'clock. That two persons be appointed tellers on the part of this 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 both Houses, assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, be entered on the Journal of the two Houses.

The House adopted an order naming the two tellers.<sup>5</sup>

<sup>1</sup> First session First Congress, Journal, p. 8.

<sup>2</sup> Second session Second Congress, Journal, p. 689 (Gales & Seaton ed.); Annals, p. 861.

<sup>3</sup> Annals, p. 641; Journal, p. 694.

<sup>4</sup> Journal, p. 699; Annals, pp. 873, 644.

<sup>5</sup> Journal, p. 700.

On February 13<sup>1</sup> a message from the Senate by Mr. Otis, their Secretary, announced that a President of the Senate<sup>2</sup> was elected for the sole purpose of opening the certificates, and counting the votes of the several States, in the choice of a President and Vice-President of the United States; and that the Senate was ready, in the Senate Chamber, to attend with the House on that occasion.

The House resolved

that Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber, for the purpose expressed in the said message.

The votes having been counted, the Vice-President announced:

George Washington unanimously elected President of the United States for the period of four years, to commence with the 4th day of March next; and John Adams elected, by a plurality of votes, Vice-President of the United States for the same period, to commence the 4th day of March next.<sup>3</sup>

### 1930. Proceedings at the electoral count of 1797.

At the first electoral count, held in the Hall of the House, the President of the Senate sat at the right of the Speaker, and the Senators on the right of the Hall.

Instance wherein a Vice-President, who was also the President-elect, presided at the electoral count.

On January 31, 1797,<sup>4</sup> the Senate adopted a resolution agreeing to a resolution providing for a joint committee—

to ascertain and report a mode of examining the votes for President and Vice-President, and of notifying the persons elected of their election, and for regulating the time, place, and manner of administering the oath of office to the President.

The House concurred, and thereafter the resolutions were adopted in form like those agreed to in 1794, except that the Hall of the House of Representatives,<sup>5</sup> instead of the Senate Chamber, was designated as the place of meeting.<sup>6</sup>

The tellers were appointed by resolution of the House.<sup>7</sup>

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<sup>1</sup> Journal, p. 701; Annals, p. 874.

<sup>2</sup> The Annals (p. 645) indicate that the Vice-President opened and presented the certificates, and the Senate Journal (pp. 485-486, Gales & Seaton ed.), shows surely that he did.

<sup>3</sup> John Adams was both Vice-President and Vice-President-elect.

<sup>4</sup> Second session Fourth Congress, Annals, p. 1535.

<sup>5</sup> On February 2, 1881 (Third session Forty-sixth Congress, Record, pp. 1129-1141), during discussion of the resolution providing for the electoral count of 1881, a lengthy discussion was occasioned by a proposition made in the Senate by Mr. John J. Ingalls, of Kansas, that the count be held in the Senate Chamber. It was urged that the Senate Chamber was the rightful place for the count, that it was necessary in having the count in the Hall of the House to transport valuable records—a transportation reputed to have been attended with some peril in the stormy days of the count of 1876—from the Senate to the House, and that in reality the Hall of the Senate was large enough. But Allen G. Thurman, of Ohio, urged that the practice of seventy-odd years—during which no Senator had been maltreated or assaulted in going to and returning from the House—should not be changed. (Record, p. 1131.)

The Senate did not agree to the motion of Mr. Ingalls.

<sup>6</sup> Journal, pp. 668, 676, 677, 678; Annals, pp. 1538, 2057, 2063.

<sup>7</sup> Journal, p. 678.

On February 8<sup>1</sup> the House directed the Clerk to inform the Senate that the House was ready to "attend them in opening the certificates," etc.

The Senate thereupon attended, the President of the Senate taking his seat on the right-hand of the Speaker, and the Senators seating themselves on the right-hand side of the Chamber.

The President of the Senate<sup>2</sup> addressed the "gentlemen of the Senate and of the House of Representatives," stating the purposes of the meeting, and stating that he had received packets containing the votes of all the States, and had received duplicate returns by post from all the States but Kentucky. It had been the practice heretofore, on similar occasions, to begin with the returns from the State at one end of the United States, and to proceed to the other. He should, therefore, do the same at this time. Mr. Adams then presented the packet from Tennessee.

The count having been completed the President of the Senate announced the State of the vote, giving the total votes for each candidate, and then declared:<sup>3</sup>

That John Adams, of Massachusetts, was duly elected President of the United States, for four years, to commence on the 4th of March next; and that Thomas Jefferson, of Virginia, was duly elected Vice-President of the United States for the like term of four years, to commence on the said 4th day of March next,

concluding in the following words:

And may the Sovereign of the Universe, the ordainer of civil government on earth, for the preservation of liberty, justice, and peace among men, enable both to discharge the duties of their offices conformably to the Constitution of the United States, with conscientious diligence, punctuality, and perseverance.

The President of the Senate and Members of the Senate then retired.

**1931. Proceedings of the electoral count of 1801.**

In 1801 the electoral count took place in accordance with arrangements made separately by the two Houses, but identical in essential particulars.

On January 22, 1801,<sup>4</sup> the House appointed the usual committee to join such committee as the Senate might appoint for arranging the preliminaries of the electoral count. On January 27<sup>5</sup> a message from the Senate announced that that body had agreed to the proposition of the House and had appointed their committee. On February 9<sup>6</sup> Mr. John Rutledge, of South Carolina, from the committee on the part of the House reported that the committee of the two Houses had taken the subject under consideration, but had come to no conclusion. Very soon thereafter a message was received from the Senate announcing:

The Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday next, at 12 o'clock, for the purpose of being present at the opening and counting of the votes for President of the United States. The Senate have appointed a teller on their part, to make a list of the votes for President of the United States as they shall be declared.

<sup>1</sup> Journal, p. 685; Annals, 2095.

<sup>2</sup> John Adams, of Massachusetts, Vice-President. The Annals show that Mr. Adams presided and opened the certificates.

<sup>3</sup> Journal, p. 686.

<sup>4</sup> Second session Sixth Congress, Journal, p. 770 (Gales & Seaton ed.); Annals, p. 941.

<sup>5</sup> Journal, p. 776.

<sup>6</sup> Journal, p. 789; Annals, pp. 742, 1007.

This message was the announcement of the fact that on February 9 the Senate on motion, had agreed to this resolution:

*Resolved*, That the Senate will be ready to receive the House of Representatives in the Senate Chamber on Wednesday next, at 12 o'clock, for the purpose of being present at the opening and counting the votes for President of the United States. That one person be appointed a teller on the part of the Senate, to make a list of the votes for President of the United States 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, which shall be entered on the journals, and if it shall appear that a choice has been made, agreeably to the Constitution, such entry on the journals shall be deemed a sufficient declaration thereof.

On February 10<sup>1</sup> the House agreed to a resolution of which the latter portion was identical with the latter portion of the Senate resolution, but with the first portion in the following terms:

*Resolved*, That the House will attend in the chamber of the Senate, on Wednesday next, at 12 o'clock, for the purpose of being present at the opening and counting of the votes for President and Vice-President of the United States; that Mr. Rutledge and Mr. Nicholas be appointed tellers, to act jointly with the teller on the part of the Senate to make a list of votes, etc.

On February 11,<sup>1</sup> at the hour named, Mr. Speaker, attended by the House, went to the Senate Chamber, and the President of the Senate, in the presence of the two Houses, proceeded to open the certificates of the electors of the several States, beginning with the State of New Hampshire. The votes having been read and tabulated, the President of the Senate announced the state of the votes to both Houses, and declared that Thomas Jefferson, of Virginia, and Aaron Burr, of New York, having the greatest number and a majority of the votes of all the electors appointed, and being equal, it remained for the House of Representatives to determine the choice.

The two Houses then separated; and the House of Representatives, being returned to their Chamber, proceeded in the manner prescribed by the Constitution to the choice of a President of the United States.

**1932. Proceedings at the electoral count of 1805.**—On February 12, 1805,<sup>2</sup> the House passed a resolution authorizing a committee to join such committee as should be appointed by the Senate to ascertain and report a mode of examining the electoral votes, etc. The Senate disagreed to that proposition, and adopted a resolution like that adopted by the Senate in 1801, when propositions for joint action had failed. The House being informed that the Senate declined to take joint action, adopted on their part, on February 13, a resolution like that adopted under similar circumstances by the House in 1801.

On February 13, the Speaker, attended by the House, proceeded to the Senate Chamber, having been informed previously by message that the Senate was ready to receive them.

The two Houses being assembled, the President of the Senate proceeded to open the certificates, and the votes were duly counted. Then the President of the Senate, in pursuance of the duty enjoined upon him, announced the state of the vote to both Houses, and declared that Thomas Jefferson, of Virginia, having the greatest number and a majority of the votes of all the electors appointed, was duly

<sup>1</sup> Journal, p. 796; Annals, p. 1022.

<sup>2</sup> Second session Eighth Congress, Journal, pp. 133, 135-137 (Gales & Seaton ed.); Annals, pp. 54, 55, 1192-1195.

elected President of the United States, for the term commencing on the fourth day of March next; and then the same declaration as to George Clinton, of New York, who was elected Vice-President.

The two Houses then separated, the House of Representatives returning to their Chamber. The Speaker resumed the chair, and the list of votes of the electors as declared by the President of the Senate was read at the Clerk's table.

### 1933. Proceedings at the electoral count of 1809.

At the electoral count of 1809 an informality in a certificate from one of the States was noticed, but no action was taken in relation to it.

The electoral count of 1809<sup>1</sup> was arranged with the usual preliminaries and forms as seen in the counts of 1813 and 1817.

The House appointed the tellers by an order.<sup>2</sup>

During the count, a Senator noted that the returns from one of the States appeared to be defective, the governor's certificate not being attached to it. Nothing further was done about it, however.<sup>3</sup>

1934. Proceedings at the electoral count of 1813.—The electoral count of 1813<sup>4</sup> took place in accordance with the preliminaries to be noticed in 1817. The House and Senate adopted similar but not identical resolutions, like those of 1817, and the count occurred without unusual incident. Before the proceedings began a message was received from the Senate announcing that the Senate had appointed Mr. Franklin a teller, on their part, in place of Mr. Gaillard, who was indisposed.<sup>5</sup>

### 1935. Proceedings at the electoral count of 1817.

At the electoral count of 1817 objection was made by a Member of the House rising in his place to the counting of the vote of Indiana.

At the electoral count of 1817 the votes of Indiana were counted although given previous to the admission of the State to the Union.

In 1817 it was held that an objection to the electoral vote of a State might not be debated or considered in the joint meeting; and the two Houses separated for action.

While in joint meeting for counting the electoral vote the two Houses may consider no proposition and perform no business not prescribed by the Constitution.

In the electoral count of 1817 the Speaker presided with the President of the Senate and ruled on a proposition made by a Member of the House.

On February 10, 1817,<sup>6</sup> Mr. Nathaniel Macon, of North Carolina, and Mr. Charles Tait, of Georgia, were appointed members on the part of the Senate to join a committee from the House "to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying

<sup>1</sup> Second session Tenth Congress, Journal, pp. 506, 508, 512-514; Annals, pp. 342, 343, 1329, 1351, 1423-1426.

<sup>2</sup> Journal, p. 512.

<sup>3</sup> Annals, p. 1424.

<sup>4</sup> Second session Twelfth Congress, Journal, pp. 664, 665, 668-671; Annals, pp. 1015, 1020.

<sup>5</sup> Journal, p. 668.

<sup>6</sup> Second session Fourteenth Congress, Journal, p. 374 (Davis edition); Annals, pp. 107, 935.



the persons elected of their election." In the House Messrs. John G. Jackson, of Virginia, William Irving, of New York, and Timothy Pitkin, of Connecticut, were joined to the committee.

On February 11<sup>1</sup> Mr. Jackson reported to the House this resolution:

*Resolved*, That the two Houses shall assemble in the chamber of the House of Representatives on Wednesday next at 12 o'clock; that two persons be appointed tellers on the part of this House to make a list of the votes as they shall be declared; that the result shall be delivered by 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, and together with a list of votes be entered on the Journals of the two Houses.

The resolution reported in the Senate<sup>2</sup> by Mr. Macon and adopted there was in general terms the same as that of the House, but provided that "one person be appointed a teller on the part of the Senate," and made no provision for House tellers, which were provided for in the House resolution.

The manner of appointing the House tellers is not indicated.

It was,

*Ordered*, That when the Members of the Senate appear to-morrow in the chamber of this House the President of the Senate shall be conducted to the chair by the Speaker; and that the Clerk of the House inform the Senate of these proceedings.<sup>3</sup>

On February 12<sup>4</sup> the House announced by message to the Senate its readiness to receive them in order to proceed with the count, and the Senate attended and took seats in the House, the President of the Senate being received by the Speaker at the chair of the House, the Speaker taking a seat beside him.

The count having proceeded, and the certificates of all the States except Indiana having been opened and read, and the President of the Senate being about to open the votes of that State for the purpose of having them counted, Mr. John W. Taylor, one of the Representatives of the State of New York, rose and objected to the same, and stated that in his opinion the votes of the electors of the said State of Indiana for President and Vice-President of the United States ought not to be received.

The Annals state<sup>5</sup> that Mr. Taylor, in objecting, addressed himself to the Speaker of the House, and that, when he proposed to state his reasons, the Speaker<sup>6</sup> interrupted him and said that the two Houses had met for a specific constitutional duty, and while so acting in joint meeting could consider no proposition or perform any business not prescribed by the Constitution.

Senator Joseph B. Varnum,<sup>7</sup> of Massachusetts, addressing the President of the Senate, expressed his concurrence in the propriety of what had been stated by the Speaker, and, for the purpose of allowing the House of Representatives to deliberate on the question, he moved that the Senate withdraw to their Chamber.

This motion was agreed to, and the Senate withdrew.

In the Senate a proposition was made that the vote of Indiana ought to be

<sup>1</sup> Journal, p. 381; Annals, p. 938.

<sup>2</sup> Annals, p. 111.

<sup>3</sup> Journal, p. 381.

<sup>4</sup> Journal, pp. 385-389; Annals, pp. 943-950.

<sup>5</sup> Annals, p. 944.

<sup>6</sup> Henry Clay, of Kentucky, Speaker.

<sup>7</sup> Speaker of Tenth and Eleventh Congresses.

counted; but the action of the House being announced before a conclusion was reached the Senate concluded that action on their part was unnecessary.<sup>1</sup>

In the House a resolution was submitted by Mr. Solomon P. Sharp, of Kentucky, in these terms:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the votes of the electors for the State of Indiana for a President and Vice-President of the United States were properly and legally given and ought to be counted.*<sup>2</sup>

Mr. John W. Taylor, of New York, moved to substitute for the text of the above the following:

That the votes of the electors of the State of Indiana for President and Vice-President of the United States, having been given previous to the admission of that State into the Union, ought not to be received and counted.

After debate the resolution was postponed indefinitely.

The House then ordered that a message be sent to the Senate to inform them that the House was again ready to receive them and continue opening the certificates and counting the votes of the electors, etc.

The Senate having again attended, the Speaker informed them that the House had not seen it necessary to come to any resolution or take any order on the subject which had produced the separation of the two Houses.<sup>3</sup>

The President of the Senate then opened the certificate of the State of Indiana, and the votes were counted.

The tellers then reported, and the President of the Senate made report of the state of the vote and announced the election of James Monroe, of Virginia, as President, and Daniel D. Tompkins, of New York, as Vice-President.

#### 1936. Proceedings at the electoral count of 1821.

At the electoral count of 1821 arrangement was made for an alternative announcement in case objection should be made to the electoral vote of Missouri, which would not change the result.

At the electoral count of 1821 the Members of the House arose and stood uncovered when the Senate entered the Hall.

At the electoral count of 1821 a committee was appointed to receive the President and Members of the Senate at the door and conduct them to their seats.

Committees of the two Houses acting jointly to devise a plan for the electoral count of 1821, reported different propositions, whereat misunderstandings arose.

The two Houses, by simple and separate resolutions, sometimes appoint committees to confer and report.

On February 6, 1821,<sup>4</sup> in the Senate, Mr. James Barbour, of Virginia, presented a resolution that a committee be appointed "to join such committee as may be

<sup>1</sup> Annals, p. 945 (footnote).

<sup>2</sup> Question was made as to the concurrent form of this resolution, because it gave to the Senate a participation in the power; but it was urged on the other hand that it was necessary to take the sense of the two Houses. Annals, p. 946.

<sup>3</sup> Annals, p. 949.

<sup>4</sup> Second session Sixteenth Congress, Annals, pp. 267, 288.

appointed by the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election." This resolution was agreed to on February 7, and Messrs. Barbour and Nathaniel Macon, of North Carolina, were appointed the committee on the part of the Senate.

In the House, on February 8,<sup>1</sup> this resolution was agreed to, and Messrs. Henry Clay, of Kentucky; John Sergeant, of Pennsylvania, and Solomon Van Rensselaer, of New York, were appointed of the committee on the part of the House.

On February 13<sup>2</sup> Mr. Barbour reported in the Senate from the joint committee two resolutions, the first being as follows:

*Resolved*, That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday next, at 12 o'clock, and the President of the Senate shall be the presiding officer; that one person be appointed a teller on the part of the Senate 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.

This resolution was agreed to by the Senate and was transmitted to the House.<sup>3</sup> But in the House<sup>4</sup> the Senate text was not considered; but Mr. Clay, from the joint committee, reported a resolution similar in some respects, but differing very essentially in others:

*Resolved*, That the two Houses shall assemble in the Chamber of the House of Representatives, on Wednesday, the 14th of February, 1821, at 12 o'clock, and the President of the Senate shall be the presiding officer of the Senate, seated on the right of the Speaker of the House, who 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, etc.

The remainder of the resolution follows verbatim the similar portion of the Senate resolution.

In the debate over the adoption of this resolution the features of allowing the Speaker a place as joint presiding officer and omitting to allow a teller to the Senate do not seem to have been noticed. Later, during the proceedings of the count, the feature relating to the Speaker was discussed, and the debates<sup>5</sup> have this explanation of the change made in the resolution from the form adopted by the Senate:

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.

At the time he presented the resolution Mr. Clay explained<sup>6</sup> that—

as convenience rendered it necessary for the Senate to meet this House here in its own Hall, it was due 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.

<sup>1</sup> Journal, p. 206; Annals, p. 1058.

<sup>2</sup> Annals, pp. 341, 342.

<sup>3</sup> Journal, p. 230.

<sup>4</sup> Journal, p. 230; Annals, pp. 1147, 1148.

<sup>5</sup> Annals, p. 1162.

<sup>6</sup> Annals, p. 1147.

The resolution was agreed to by the House.

The second resolution was as follows in both the House and Senate forms:<sup>1</sup>

*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 AB, for President of the United States ——— votes. If not counted, for AB, for President of the United States ——— votes. But, in either event, AB is elected President of the United States; and in the same manner for Vice-President.

Missouri had not been formally admitted to the Union; and this resolution was debated at length in both Houses. It was finally agreed to in both Houses, the vote in the House being yeas 90, nays 67.

The records do not indicate by what method the tellers on the part of the House were appointed.<sup>2</sup>

On February 14<sup>3</sup> the usual message having been sent to the Senate to inform them of the readiness of the House to proceed with the count, Mr. Clay proposed informally<sup>4</sup> and the House, by general consent, determined that the Members should rise and stand uncovered to receive the Senate, and that seats on the right hand of the Chair should be set apart for the Senators.

Mr. Clay offered this resolution:

*Resolved*, That a committee be appointed to receive the President and Members of the Senate at the door of this House, and to conduct the President of the Senate to the Speaker's chair, and the Senators to the seats assigned for their use.

Objection being made on the ground that it had been usual for the Speaker to receive the President of the Senate and invite him to a seat beside him, Mr. Clay said it was true that the resolution proposed an innovation, but his experience in the chair had convinced him that the regulation would obviate embarrassments.

The resolution was then agreed to, and Mr. Clay and Mr. Mark L. Hill, of Massachusetts, were appointed the committee.

1937. Proceedings at the electoral count of 1821, continued.

In 1821 the electoral vote of Missouri was objected to on the ground that the State was not in the Union, but as the vote was not material to the result the objection was tabled.

In the electoral counts of 1817 and 1821, when a Member of the House objected to the electoral vote of a State, it appears that the House alone acted on the objection.

In the electoral count of 1821 all debate and proceedings not prescribed in the joint rule were held out of order in the joint meeting.

At the electoral count of 1821 the Speaker was made, so far as the action of the House could control, presiding officer of the House portion of the joint meeting, and he did in fact so preside.

The Senate having attended, the count proceeded with the usual forms until

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<sup>1</sup> Journal, pp. 230, 231; Annals, pp. 342, 1147-1152.

<sup>2</sup> Journal, p. 232.

<sup>3</sup> Journal, pp. 232, 233; Annals, pp. 1154-1166.

<sup>4</sup> Annals, p. 1154.

the votes of the electors of Missouri were announced by the President of the Senate and handed to the tellers.

Thereupon Mr. Arthur Livermore, of New Hampshire, a Representative, rose and—

objected to the counting of any votes given by Missouri for President and Vice-President of the United States of America, because Missouri is not a State in 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.

It does not appear that the Senate took any action on the objection.<sup>1</sup>

In the House Mr. John Floyd, of Virginia, submitted this 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.

After lengthy debates<sup>2</sup> the resolution was, on motion of Mr. Clay, laid on the table.

Then a resolution was sent to the Senate informing them of the readiness of the House to continue the enumeration of the votes of the electors, etc.

The Senate having appeared and taken seats, 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 recorded.

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.

The President of the Senate having announced the state of the vote, in accordance with the directions of the resolution, and being about to declare the persons elected, Mr. Floyd, of Virginia, addressed the Chair, and inquired whether the votes of Missouri were or were not counted.

Mr. John Randolph, of Virginia, also arose and was addressing the Chair, when the Speaker<sup>3</sup> pronounced Mr. Randolph to be out of order and invited him to take his seat.

There was a demand from the floor that Mr. Randolph be allowed to proceed, and Mr. Floyd asked of the Chair whether or not he was in order.

The Speaker determined that he was not in order at this time, the only business at the present time being that prescribed by the rules.

Order being restored, the President of the Senate proceeded to declare the persons elected President and Vice-President of the United States—James Monroe, of Virginia, and Daniel D. Tompkins, of New York.

As the President of the Senate concluded, Mr. Randolph addressed the Chair, but was required to take his seat.

On motion of a Member of the Senate, the Senate retired.

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<sup>1</sup> Second session Sixteenth Congress, Journal of Senate p. 190. Also in 1817 when a Member of the House objected to the vote of Indiana the Senate concluded that action on its part was unnecessary.

<sup>2</sup> Annals, pp. 1154-1163.

<sup>3</sup> John W. Taylor, of New York, Speaker.

The House being called to order,<sup>1</sup> Mr. Randolph offered these resolutions:

*Resolved*, That the electoral votes of the State of Missouri have this day been counted, and do constitute a part of the majority of 231 votes given for President and of 218 votes given for Vice-President,

*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.

The resolutions went over to the succeeding day, when the House declined to consider them.

### 1938. Proceedings at the electoral count of 1825.

The electoral college having failed to choose a President of the United States in 1825, the House proceeded to elect in accordance with the Constitution.

On February 8, 1825,<sup>2</sup> the report of the joint committee appointed "to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election," was made in the Senate in form of the following resolution:

*Resolved*, That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday, the 9th day of February, 1825, at 12 o'clock; that one person be appointed teller on the part of the Senate, and 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 to the two Houses, assembled as aforesaid, the state of the vote and the person or persons elected, if it shall appear that a choice hath been made agreeably to the Constitution of the United States; which annunciation shall be deemed a sufficient declaration of the election of the person or persons elected, and, together with a list of the votes, shall be entered on the Journals of the two Houses.

It was stated in the course of the discussion that this was precisely the resolution agreed to on similar occasions from 1805 to 1817, inclusive. The committee on the part of the Senate would have preferred in some respects a different arrangement, but they were overruled by the committee on the part of the House.

Senator John H. Eaton, of Tennessee, proposed this amendment:

If any objection shall arise to the vote or votes of any State, it shall be filed in writing and entered on the Journals of the Senate and House of Representatives; but the two Houses shall not separate until the entire votes are counted and reported, which report shall be liable to be controlled and altered by the decision to be made by the two Houses, after their separation, relative to any objections that may be made and entered on the Journals; provided no objection taken shall be considered valid unless concurred in by the two Houses.

Senators Robert Y. Hayne, of South Carolina, and Martin Van Buren, of New York, opposed this proposition on the ground that the House had failed to act on the bill passed at the preceding session to arrange for all possible contingencies, and it was now too late to take action. So the amendment was disagreed to, and the resolution as reported was agreed to.

In the House<sup>3</sup> the same day the resolution was also agreed to.

On February 9,<sup>4</sup> after the message had been sent to inform the Senate of the readiness of the House to proceed with the count, the Senate appeared, and the

<sup>1</sup> Journal, pp. 235, 239; Annals, pp. 1166, 1167.

<sup>2</sup> Second session, Eighteenth Congress, Debates, p. 515.

<sup>3</sup> Journal, p. 216, Debates, p. 516.

<sup>4</sup> Journal, pp. 219-221; Debates, p. 526.

President of the Senate "was invited to a seat on the right hand of the Speaker of the House." The Senators were assigned seats together in front of the Speaker's chair. The tellers took seats at the Clerk's table.

The President of the Senate having opened the packets, and the certificates having been read, the results were declared and tabulated.

The tellers then left the Clerk's table and presented themselves in front of the Speaker, and one of their number delivered the report of the votes given, which was then handed to the President of the Senate, who again read it to the two Houses.

This announcement of the state of the vote showed that Andrew Jackson, of Tennessee, had received 99 votes; John Quincy Adams, of Massachusetts, 84; William H. Crawford, of Georgia, 41; and Henry Clay, of Kentucky, 37. The President of the Senate<sup>1</sup> then announced—

that, neither of the said persons having received a majority of the votes of the electors appointed by the several States to vote for President of the United States, it therefore devolved upon the House of Representatives of the United States to choose a President of the United States, whose term of service is to commence on the 4th day of March next, from the three highest on the list of those voted for by the electors for President of the United States; which three he declared to be Andrew Jackson, of Tennessee, John Quincy Adams, of Massachusetts, and William H. Crawford, of Georgia.

The vote for Vice-President was also announced, and John C. Calhoun, having "a majority of the whole number of the votes of the electors appointed in the several States," etc., was declared duly elected.

**1939. Proceedings at the electoral count of 1829.**—The electoral count of 1829 occurred in the usual way, the preliminaries<sup>2</sup> having been arranged by a joint committee. It does not appear how the tellers on the part of the House were appointed.<sup>3</sup>

On February 11<sup>4</sup> the usual message was sent to the Senate informing them that the House was ready to receive them and to proceed with the count. The Senate presently appeared, the Vice-President at their head, preceded by the Secretary and Sergeant-at-Arms of the Senate. The Vice-President took his place at the right of the Speaker, the Senators being seated in the area before the desk. The tellers sat at the Clerk's desk.

The Vice-President presented first the returns from Maine. One package had come by mail and the other by express, and the packets had been certified by the delegation from Maine to contain the votes of that State for President and Vice-President.<sup>5</sup>

The votes having been tabulated the teller on the part of the Senate read the report, and thereupon the Vice-President announced the state of the vote and the persons elected: Andrew Jackson, of Tennessee, President, and John C. Calhoun, of South Carolina, Vice-President.

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<sup>1</sup> John Gaillard, of South Carolina.

<sup>2</sup> Second session Twentieth Congress, Journal, pp. 237, 243, 258; Debates, pp. 309, 322.

<sup>3</sup> Journal, p. 258.

<sup>4</sup> Journal, pp. 272, 273.

<sup>5</sup> Debates, p. 350.

**1940. Proceedings at the electoral count of 1833.**—The electoral count of 1833<sup>1</sup> took place in accordance with a resolution in the phraseology<sup>2</sup> of the resolution used in 1825 and 1829, abandoned in 1837 and copied for the last time in 1845. The preliminaries of this count were arranged in the manner usual when no unusual questions were presented.

It does not appear whether or not the Speaker appointed the tellers.

**1941. Proceedings at the electoral count of 1837.**

In 1837 a joint committee of the two Houses found that several electors were disqualified by reason of holding offices of trust or profit under the United States at the time of their election.

In 1837 the votes of certain disqualified Presidential electors were counted, their number not being sufficient to affect the result and there being doubt as to what tribunal should pass on the qualifications.

At the electoral count of 1837 the vote of Michigan, which was not essential in the result, was given an alternative announcement, as the State had not been admitted to the Union at the time the vote was cast.

After the electoral count of 1837 had shown no choice for Vice-President, the Senate proceeded to elect, in accordance with the Constitutional requirement.

In the earlier practice the House, as the hour for the electoral count approached, sent a message to the Senate announcing readiness to receive the latter body.

On February 1, 1837,<sup>3</sup> the House received from the Senate the following resolution:

*Resolved*, That a committee be appointed, to join such committee as may be appointed by the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election; and also to inquire into the expediency of ascertaining whether any votes were given at the recent election contrary to the prohibition contained in the second section of the second article of the Constitution; and, if any such votes were given, what ought to be done with them; and whether any, and what, provision ought to be made for securing the faithful observance in future of that section of the Constitution.

The House agreed to the resolution, and the joint committee was made up as follows: Senators Felix Grundy, of Tennessee; Henry Clay, of Kentucky; Silas Wright, jr., of New York; Representatives Francis Thomas, of Maryland; Churchill C. Cambreleng, of New York; John Reed, of Massachusetts; Henry W. Connor, of North Carolina, and Francis S. Lyon, of Alabama.

On February 4 Mr. Thomas, in the House, submitted a report<sup>4</sup> from the joint committee:

It appears [says the report] that Isaac Waldron, who was an elector in New Hampshire, was, at the time of his appointment as elector, president of a deposit bank at Portsmouth, and was appointed and acting as pension agent without compensation under the authority of the United States; that in two cases persons of the same names with the individuals who were appointed and acted as electors in the State of North Carolina held the offices of deputy postmasters under the General Government.

<sup>1</sup> Second session Twenty-second Congress, Journal, pp. 262, 278, 279, 329; Debates, pp. 1722, 1723.

<sup>2</sup> Journal, p. 279.

<sup>3</sup> Second session Twenty-fourth Congress, Journal, p. 326; Globe, p. 146.

<sup>4</sup> House Report No. 191, second session Twenty-fourth Congress.



It also appears that in New Hampshire there is one case, in Connecticut there is one case, and in North Carolina there is one case, in which, from the report of the Postmaster-General, it is probable that at the time of the appointment of electors in these States, respectively, the electors or persons of the same names were deputy postmasters. The committee have not ascertained whether the electors are the same individuals who held, or are presumed to have held, the offices of deputy postmasters at the time when the appointment of the electors was made; and this is the less to be regretted, as it is confidently believed that no change in the result of the election of either the President or Vice-President would be affected by the ascertainment of the fact in either way, as five or six votes only would in any event be abstracted from the whole number; for the committee can not adopt the opinion entertained by some, that a single illegal vote would vitiate the whole electoral vote of the college of electors in which it was given, particularly in cases where the vote of the whole college has been given for the same persons.

The committee are of opinion that the second section of the second article of the Constitution, which declares that "no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector," ought to be carried in its whole spirit into rigid execution, in order to prevent officers of the General Government from bringing their official power to influence the elections of President and Vice-President of the United States. This provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the appointment of electors, and the disqualification relates to the time of the appointment; and that a resignation of the office of deputy postmaster after his appointment as elector would not entitle him to vote as elector under the Constitution.

Should a case occur in which it became necessary to ascertain and determine upon the qualifications of electors of President and Vice-President of the United States, the important question would be presented, what tribunal would, under the Constitution, be competent to decide? Whether the respective colleges of electors in the different States should decide upon the qualifications of their own members, or Congress should exercise the power, is a question which the committee are of opinion ought to be settled by a permanent provision upon the subject.

The committee, at present and in part, report the following resolutions:

*Resolved*, That the two Houses shall assemble in the Chamber of the House of Representatives on Wednesday next at 12 o'clock; and the President of the Senate shall be the presiding officer; that one person be appointed a teller on the part of the Senate and two on the part of the House of Representatives 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 votes, be entered on the Journals of the two Houses.

*Resolved*, That in relation to the votes of Michigan, if the counting or omitting to count them, shall not essentially change the result of the election, they shall be reported by the President of the Senate in the following manner: Were the votes of Michigan to be counted, the result would be, for A. B. for President of the United States, — votes. If not counted for A. B. for 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.

On February 4<sup>1</sup> the resolutions were considered and agreed to by the Senate. It appears from the debate that the act admitting Michigan to the Union had not been passed by Congress when she voted for President, but had been passed before the time for the electoral count. Mr. Clay said that the proceeding in this case was proposed on the same lines as the procedure in the case of Missouri, although the case of Michigan was not precisely that of Missouri or of Indiana.

On February 6<sup>2</sup> the resolutions were agreed to by the House.

On February 8<sup>3</sup> the count occurred. Question arising as to procedure, the Speaker<sup>4</sup> said that the usual course had heretofore been for the House, some short

<sup>1</sup> Globe, pp. 152, 153.

<sup>2</sup> Journal, p. 34; Globe, p. 3161.

<sup>3</sup> Journal, pp. 357-359; Globe, p. 167.

<sup>4</sup> James K. Polk, of Tennessee, Speaker.

time before the arrival of the hour, to send a message to the Senate informing that body that the House was in readiness to receive them and count the votes. The Chair stated further that, so far as he had been informed, the mode of receiving the Senate by the House was for the Members to stand uncovered. Upon every occasion of this kind, with a single exception, the invariable course had been to send a message to the Senate by the Clerk. In one instance only the message had been transmitted by a committee of two Members of the House, who were also appointed to conduct the Senate into the Hall, but that was a departure from the former practice.

The message was sent to the Senate in the usual form.

The Chair announced that seats on the right of the Speaker's chair had been provided for the accommodation of the Senate.

Shortly after, the Senate entered the Hall, with the President of the Senate, the Hon. William R. King, of Alabama, at their head, preceded by the Secretary and Sergeant-at-Arms of the Senate, and were received at the door of the Hall and conducted to the seats assigned them by the Sergeant-at-Arms of the House of Representatives. The President of the Senate was seated at the right of the Speaker, and the tellers at the Clerk's desk.

The count proceeded in the usual manner, and the President of the Senate announced <sup>1</sup> the state of the vote for President in accordance with the directions of the resolution, and declared that Martin Van Buren, having received a majority of the whole number of the electoral votes, is duly elected President of the United States, etc.

Then, having announced the state of the vote for Vice-President, the President of the Senate said:

But, in either event, no person has a majority of the electoral votes as Vice-President of the United States, and I do, therefore, declare that, no person having a majority of the whole number of electoral votes as Vice-President of the United States, an election to that office has not been effected, that Richard M. Johnson, of Kentucky, and Francis Granger, of New York, are the two highest on the list of electoral votes, and that it now devolves on the Senate of the United States, as provided in the Constitution, from these persons to elect a Vice-President of the United States.

The Senate <sup>2</sup> having returned to their chamber, Mr. Felix Grundy, of Tennessee, presented the following:

Whereas upon counting the electoral votes, in the presence of both Houses of Congress, given at the late election for President and Vice-President of the United States, it appears that no person has received for the office of Vice-President of the United States a majority of the votes of the whole number of electors appointed, and it also appearing that Richard M. Johnson, of Kentucky, and Francis Granger, of New York, have the two highest numbers on the list of those voted for to fill the office of Vice-President; therefore,

*Resolved*, That the Senate do now proceed to choose a Vice-President from the said Richard M. Johnson and Francis Granger, they having the two highest numbers on the list, and the manner of voting shall be as follows: The Secretary of the Senate shall call the names of Senators in alphabetical order, and each Senator will, when his name is called, name the person for whom he votes, and if a majority of the whole number of Senators shall vote for either the said Richard M. Johnson or Francis Granger, he shall be declared by the presiding officer of the Senate constitutionally elected Vice-President of the United States for four years, commencing on the 4th day of March, 1837.

<sup>1</sup> Journal, p. 359; Globe, p. 167.

<sup>2</sup> Second session Twenty-fourth Congress, Senate Journal, pp. 229, 230; Globe, p. 172.

The Senate, having proceeded by unanimous consent to consider the resolution, concurred therein.

And the roll having been called, it appeared that the whole number of votes were 49, and that of these 33 votes were given in favor of Richard M. Johnson, of Kentucky, and 16 votes in favor of Francis Granger, of New York.

The President of the Senate thereupon declared Richard M. Johnson, of Kentucky, constitutionally elected Vice-President of the United States for four years, commencing on the 4th day of March, 1837.

Mr. Grundy then presented and the Senate agreed to a resolution providing for a committee to notify Mr. Johnson of his election.

**1942. Proceedings at the electoral count of 1841.**—The preliminaries<sup>1</sup> of the electoral count of 1841 were arranged in the usual way. The resolution<sup>2</sup> directing the mode of ascertaining the result was in the form used in 1837 and from 1849 to 1861, inclusive, and differed from the form of 1845 materially.<sup>3</sup>

The resolution having been adopted in the House; it was

*Ordered*, That Mr. Cushing and Mr. John W. Jones be the said tellers on the part of the House.<sup>4</sup>

On February 10<sup>5</sup> the count took place without incident. The usual message was sent to the Senate informing that body that the House was ready to receive it and proceed in opening the certificates and counting the votes; the President of the Senate on arriving took his seat on the right of the Speaker, the tellers made out their tabulations in duplicate, and the announcement of the persons elected was made as usual.

**1943. Proceedings at the electoral count of 1845.**—In the electoral count of 1845 the preliminaries<sup>6</sup> were arranged in the usual form, the resolution showing for the last time, however, the following verbiage:<sup>7</sup>

*Resolved*, That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday, the 12th day of February, 1845, at 12 o'clock; that one person be appointed teller on the part of the Senate, and two persons be appointed tellers on the part of the House, to make a list of the votes for President and Vice-President of the United States, as they shall be declared; that the result be delivered to the President of the Senate, who will announce to the two Houses assembled as aforesaid the state of the vote, and the person or persons elected, if it shall appear that a choice hath been made, agreeably to the Constitution of the United States; which annunciation shall be deemed a sufficient declaration of the person or persons elected; and that the said proceedings, together with a list of the votes, be entered on the Journals of the two Houses.

The House on February 7,<sup>8</sup>

*Ordered*, That Mr. Burke and Mr. Joseph R. Ingersoll be the said tellers on the part of the House.

The count took place on February 12 without incident.<sup>9</sup>

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<sup>1</sup> Second session Twenty-sixth Congress, Journal, pp. 216, 220, 225, 226; Globe, pp. 137, 140.

<sup>2</sup> Journal, p. 225; Globe, p. 140.

<sup>3</sup> See section 1943 of this work.

<sup>4</sup> Journal, p. 226.

<sup>5</sup> Journal, pp. 251, 253; Globe, pp. 159, 160.

<sup>6</sup> Second session Twenty-eighth Congress, Journal, p. 322.

<sup>7</sup> Journal, p. 343; Globe, pp. 259, 260.

<sup>8</sup> Journal, p. 343.

<sup>9</sup> Journal, pp. 371, 372; Globe, p. 277.

**1944. Proceedings at the electoral count of 1849.**

At the electoral count of 1849 the Vice-President ruled that in the joint meeting no other motion or proceeding than that prescribed by the Constitution was in order.

At the electoral count of 1849 the Speaker appointed the tellers on the part of the House without authority expressly given.

A teller appointed for the electoral count may be excused by authority of the House.

The preliminaries<sup>1</sup> of the electoral count of 1849 were arranged in the usual manner. The tellers were appointed on the part of the House, apparently without express permission given to the Speaker by the House.<sup>2</sup>

One of the tellers, Mr. Washington Hunt, of New York, at his request, was excused by the House, and Mr. Washington Barrow, of Tennessee, was appointed.<sup>3</sup>

On February 14,<sup>4</sup> after a message had been sent in the usual form by the House, the Senate appeared and the joint assembly was duly organized.

The returns of the State of Maine were first opened, read, and recorded.

Thereupon Mr. Alexander H. Stephens, of Georgia, a Member of the House, suggested that the reading at length of the returns from each State be dispensed with.

The Vice-President<sup>5</sup> stated that no motion was in order, and no other mode of proceeding could be adopted but that pointed out by the Constitution of the United States; but that the teller might abridge the reports so far as to give merely the results of the electoral ballotings of each State.

**1945. Proceedings at the electoral count of 1853.**

For the electoral count of 1853 the House authorized the Speaker to appoint the tellers.

At the electoral count of 1853 the Senators and officers participating were seated with especial care as to order.

On January 31, 1853,<sup>6</sup> steps were taken in the Senate which resulted in the appointment of a joint committee on the part of the House and Senate to "ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election." This committee later reported the usual resolution,<sup>7</sup> which was agreed to by the two Houses. The Speaker, on motion put and carried,<sup>8</sup> was authorized to appoint the tellers on the part of the House.

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<sup>1</sup> The resolution was changed quite materially from the old form of the count four years previous and took the form which it retained until 1865. The committee this year were: Senators, John M. Clayton, of Delaware, Jefferson Davis, of Mississippi, and John Davis, of Massachusetts, and Representatives Hunt, Barrow, McClelland, Truman Smith, and Harmanson. The records do not indicate the reasons for the change. For the full form of this resolution, see the proceedings of the electoral count of 1861, section 1947 of this chapter.

<sup>2</sup> Second session Thirtieth Congress, Journal, p. 390.

<sup>3</sup> Journal, p. 409; Globe, p. 491.

<sup>4</sup> Journal, pp. 442, 443; Globe, p. 534.

<sup>5</sup> George M. Dallas, of Pennsylvania, Vice-President.

<sup>6</sup> Second session Thirty-second Congress, Journal, pp. 211, 213; Globe, pp. 450, 459.

<sup>7</sup> Journal, pp. 233, 234; Globe, pp. 499, 511.

<sup>8</sup> Journal, p. 234; Globe, p. 511.

On February 9,<sup>1</sup> the House voted that a message be sent to the Senate informing that body that it was ready to receive it for the purpose of the electoral count, and at 12.30 p. m. the Senate, preceded by Hon. D. R. Atchison, its President pro tempore, and its officers, entered the Hall of the House. The President pro tempore having been conducted to the Chair, the Speaker of the House took a seat on his left, and the Senators occupied the seats assigned them, in the area fronting the Clerk's desk. The Sergeants-at-Arms of the two Houses occupied seats on the platform, at the right and left of the Chair. The tellers took their seats at the Clerk's desk, and were assisted on the right by the Secretary of the Senate and on the left by the Clerk of the House. Subordinate clerks of the Senate and House were seated at a table in front of the Clerk's desk.<sup>2</sup>

The count proceeded without incident, and at the close, by direction of the President pro tempore, the Senate retired.

The Senate having returned to its Chamber, Mr. R. M. T. Hunter, of Virginia, teller on the part of the Senate, reported,<sup>3</sup> by instruction of the tellers, resolutions providing for notification of the candidates. In the House Mr. George W. Jones, of Tennessee, one of the House tellers, offered as "from the joint committee heretofore appointed on that subject" the resolutions of notification.<sup>4</sup>

#### 1946. Proceedings of the electoral count of 1857.

A difficulty was caused during the electoral count of 1857 by the vote of Wisconsin, which was not cast on the day prescribed by law.

During the electoral count of 1857 the President pro tempore held that the joint meeting might not pass on the validity of the vote of a State.

During the electoral count of 1857 it was held that no vote could be taken in the joint meeting, and that no motion calling for a vote was in order.

During the electoral count of 1857, a question arising as to the electoral vote of Wisconsin, a Senator moved and the Senate voted to retire to its own Chamber, whence it did not return.

The joint committee which arranged for the electoral count of 1857 consisted of a larger number of Representatives than Senators, as had been the practice previously in reference to similar committees.

The House authorized the Speaker to appoint the tellers for the electoral count of 1857.

On February 2, 1857,<sup>5</sup> the House received notice that the Senate had appointed three members of a joint committee to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the

<sup>1</sup>Journal, pp. 263, 265; Globe, pp. 549, 550.

<sup>2</sup>The law now directs the order in which the officers and Members shall be seated. See section 1919 of this work.

<sup>3</sup>Globe, p. 549.

<sup>4</sup>Journal, p. 265. This joint committee evidently is the committee appointed to report a mode of counting. Both Messrs. Hunter and Jones were members of it, and probably the former reported not as teller but as member of the committee.

<sup>5</sup>Third session Thirty-fourth Congress, Journal, p. 338; Globe, p. 538.

persons of their election. Thereupon it was ordered that the House agree to a committee of five members to join the Senate committee.

On February 4,<sup>1</sup> the resolution<sup>2</sup> was reported and adopted in the Senate, and on February 5<sup>3</sup> in the House. As soon as the resolution was agreed to, the Speaker was authorized, a motion being made and carried, to appoint the tellers on the part of the House.<sup>4</sup>

On February 11 the House informed the Senate that it was ready to receive that body for the purpose of making the count, and soon the Senate appeared. The President pro tempore took his seat on the right of the Speaker, and the members of the Senate "took seats provided for them in the area of the House."

The count proceeded, beginning with the State of Maine. When Wisconsin was reached the return showed that the electors of that State cast their votes on December 4 instead of the first Wednesday, which was the 3d, as prescribed by law.

The return of Wisconsin having been presented, Mr. John Letcher, of Virginia, announced his desire to object to counting the vote of Wisconsin.

The President pro tempore<sup>5</sup> held that debate was not in order until the tellers had reported to the convention, and that it would not be in order at the present time to move that the vote of Wisconsin be rejected.

The count being concluded, the tellers announced the state of the vote, counting the five votes of Wisconsin, which had no influence on the result.

Thereupon Mr. Letcher asked if it would be in order to move to exclude the vote of Wisconsin; and Senator John J. Crittenden, of Kentucky, asked if Congress had no power to decide upon the validity or invalidity of a vote.

The President pro tempore said:

The Chair considers that, under the law and the concurrent order of the two Houses, nothing can be done here but to count the vote by tellers, and to declare the vote thus counted to the Senate and House of Representatives sitting in this Chamber. What further action may be taken, if any further action should be taken, will devolve upon the properly constituted authorities of the country—the Senate or House of Representatives, as the case may be. \* \* \* In pursuance of the order of the two Houses, the Presiding Officer will now announce the vote which has been delivered to him by tellers.

The President pro tempore then announced the state of the vote as reported by the tellers, and declared James Buchanan elected President, and John C. Breckinridge, Vice-President.

Thereupon the point was raised by Mr. Humphrey Marshall, of Kentucky, a Representative, that the President pro tempore had announced and therefore counted the vote of Wisconsin.

Mr. William Bigler, of Pennsylvania, teller on the part of the Senate, announced that he was instructed by the tellers to state to the President and the convention that they had not yet signed the certificate, and that they had determined to sign it only when it set forth all the facts. One of these facts was with reference to the

<sup>1</sup>Globe, p. 568.

<sup>2</sup>This resolution is practically the same as that agreed to in 1861. See section 1947 of this volume.

<sup>3</sup>Journal, p. 364; Globe, p. 587.

<sup>4</sup>This is indicated by both Journal and Globe.

<sup>5</sup>James M. Mason, of Virginia, President pro tempore.

vote of Wisconsin, the vote of that State not having been cast on the day prescribed by law. The certificate which they would sign would set forth that fact.

Protests against the action of the President pro tempore were made by Senators John J. Crittenden, of Kentucky, and Robert Toombs, of Georgia.

Mr. James L. Orr, of South Carolina, moved that the vote of Wisconsin be rejected, and that the tellers be directed not to include it in their report.

Senator Lewis Cass, of Michigan, made the point that no vote could be taken, since who should say whether they were to vote per capita or by States; as representatives of the people or of the States. If they could not vote they could not discuss. The only thing to do was for the two bodies to adjourn to their respective Chambers.

The President pro tempore held:

It is the opinion of the Presiding Officer that no vote can be taken as a joint vote by the two Houses thus assembled, and that no motion calling for a vote is in order.

The President pro tempore was about to direct that the Senate return to its Chamber, and had so announced, when he reconsidered the order on representation that the tellers had not signed the certificate, and on protests by Senators Toombs, of Georgia, and Stephen A. Douglas, of Illinois, that the tellers must await the decision of the two Houses.

An attempt was made to appeal from the decision of the Chair in excluding the motion of Mr. Orr, but the Chair declined to entertain any motion that would involve a vote of the two Houses.

Senator Lyman Trumbull, of Illinois, submitted a motion that the Senate return to its own Chamber to consider the matter.

The President pro tempore, disregarding a suggestion that he put himself at the head of the Senate and retire without vote, put the question and the Senate agreed to the motion.<sup>1</sup>

Thereupon the Senate, preceded by its President and other officers, retired from the Hall of the House.

The Senate having reached its Hall and come to order, Mr. Bigler, teller on the part of the Senate, proceeded to refer to the events in the joint convention<sup>2</sup> and to present a written report signed by all the tellers and setting forth the state of the vote and the condition of the vote of Wisconsin.<sup>3</sup>

The Senate debated the question two days,<sup>4</sup> beginning with a proposition that there be a conference of the two Houses through the joint committee which reported the resolution governing the count. Then Senator Crittenden proposed a concurrent resolution declaring the vote of Wisconsin null and void. Finally the resolution was laid on the table without division, and the Senate concurred with

<sup>1</sup> Globe, p. 654.

<sup>2</sup> Senator William M. Seward, of New York, protested against the use of the word "convention" as not found in the Constitution or any law. Globe, p. 644.

<sup>3</sup> It does not appear whether or not this is the report referred to in the proceedings of the joint convention. The present custom is for the tellers to sign the tabulated statement, but the report here given gives only the summaries. Globe, p. 644.

<sup>4</sup> Globe, pp. 644-650, 662-668.

the House in passing a resolution to constitute a committee to notify the President-elect and Vice-President-elect of their election.

The House, after two days' debate <sup>1</sup> and the presentation of various propositions, finally agreed to the resolution providing for a notification of the President-elect and Vice-President-elect of their election.

#### 1947. Proceedings at the electoral count of 1861.

The House empowered the Speaker to appoint the tellers for the electoral count of 1861.

On February 2, 1861,<sup>2</sup> the House authorized the appointment of a committee of five Members to join a similar committee on the part of the Senate "to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons chosen of their election."

On February 5 <sup>3</sup> Mr. Lyman Trumbull, of Illinois, from the joint committee, reported in the Senate the following resolution, with the statement that it was the usual form adopted "since the foundation of the Government:"<sup>4</sup>

*Resolved*, That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday, the 13th day of February, 1861, at 12 o'clock, and the President of the Senate shall be the presiding officer; that one person be appointed a teller on the part of the Senate and two on the part of the House of Representatives 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.

On February 5, 1861,<sup>5</sup> the resolution was agreed to by the House, and on motion made from the floor the Speaker was empowered to appoint the tellers.<sup>6</sup>

The count took place under this resolution without unusual incident.<sup>7</sup>

#### 1948. Proceedings of the electoral count of 1865.

At the electoral count of 1865 the Vice-President, in deference to a provision of law, withheld from the joint meeting the returns from the States of Louisiana and Tennessee.

A motion was entertained in the joint meeting for the electoral count of 1865, but only for determination by the Houses separately.

It was held during the electoral count of 1865 that an objection to the vote of a State must be raised at the time of the reading of the certificate.

On February 6, 1865,<sup>8</sup> the House and Senate were in joint convention for counting the electoral vote under the terms of the recently framed Joint Rule 22.<sup>9</sup> The

<sup>1</sup> Journal, pp. 400-402, 405, 406; Globe, pp. 654-660, 672-675.

<sup>2</sup> Second session Thirty-sixth Congress, Journal, p. 260, 261; Globe, p. 715.

<sup>3</sup> Globe, p. 740.

<sup>4</sup> In reality, this form of resolution dated from 1837, 1841 and 1849. The resolution of 1845 differed in several respects. See section 1943 of this work.

<sup>5</sup> Journal, pp. 273, 274; Globe, pp. 756, 757.

<sup>6</sup> The Journal does not record the motion that the Speaker be authorized to appoint. The Globe has it as made by Mr. Elihu B. Washburne, of Illinois.

<sup>7</sup> Journal, p. 310; Globe, p. 894.

<sup>8</sup> Second session Thirty-eighth Congress, Globe, pp. 668, 669.

<sup>9</sup> For terms of this joint rule see section 1951 (footnote) of this work. Electoral count of 1873.



Vice-President<sup>1</sup> 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 law<sup>2</sup> 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.

<sup>1</sup> Hannibal Hamlin, of Maine, Vice-President.

<sup>2</sup> 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,<sup>1</sup> the House and Senate met in joint convention for counting the electoral vote under the terms of the joint rule of 1865<sup>2</sup> and a special rule adopted for this count.<sup>3</sup> 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 tempore<sup>4</sup> 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.

<sup>1</sup> Third session Fortieth Congress, Journal, pp. 314, 320; Globe, pp. 1056, 1062.

<sup>2</sup> For form of this joint rule see section 1951 (footnote) of this work.

<sup>3</sup> 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.”

<sup>4</sup> 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,<sup>1</sup> 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.

<sup>1</sup> Globe, pp. 1050-1055.

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

In the House of Representatives<sup>1</sup> 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.

<sup>1</sup> Journal, p. 315; Globe, pp. 1058, 1059.

When the joint convention reassembled<sup>1</sup> 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.<sup>2</sup>

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

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 debate<sup>4</sup> arose, in the course of which the Speaker, who left the chair to participate, said:<sup>5</sup>

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.

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<sup>1</sup> Globe, pp. 1062, 1063.

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

<sup>3</sup> Journal, p. 320; Globe, p. 1063.

<sup>4</sup> Globe, pp. 1064-1067, 1094-1107, 1144-1148.

<sup>5</sup> 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,<sup>1</sup> the subject was laid on the table, yeas 130, nays 55.

In the Senate, on February 11,<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> The formalities of assembling being over, by unanimous consent of

<sup>1</sup> Journal, p. 335; Globe, p. 1148.

<sup>2</sup> Globe, p. 1069.

<sup>3</sup> Third session Forty-second Congress, Journal, p. 374; Globe, p. 1294.

<sup>4</sup> 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

the joint convention, it was ordered that the reading of the certificates at length should be dispensed with, and that the tellers should make examination and announce whether or not in each case the certificate of the governor of the state accompanied the return.<sup>1</sup>

The count proceeded<sup>2</sup> until the State of Georgia was reached, when an objection was made by Mr. George F. Hoar, of Massachusetts, a Representative. By unanimous consent this objection was reserved and the count proceeded, until an objection was filed to the vote of the State of Mississippi.

The Vice-President<sup>3</sup> then announced that two copies would be made of the objections, one for the House and one for the Senate. The Vice-President also stated that a doubt had been suggested as to the authority of the President of the Senate to leave in the possession of the House any official document in his possession pertaining to the electoral vote. But as the tellers had reported, besides the documents delivered to the Vice-President by messenger, duplicates received by mail, he would, by unanimous consent, leave the duplicates in possession of the House. There being no objection this was done.

The objections having been formally presented, the Vice-President announced that the Senate would withdraw to their Chamber. The Senate accordingly withdrew.

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Representatives for its decision. And no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses, which being obtained, the two Houses shall immediately reassemble, and the presiding officer shall then announce the decision of the question submitted, and upon any such question there shall be no debate in either House. And any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner."

The next paragraph provides for the seating of the officers and members of the joint convention. The present law embodies this paragraph. (See section 1919 of this work.) The joint rule then continues:

"Such joint meeting shall not be dissolved until the electoral votes are all counted and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any of such votes, in which case it shall be competent for either House, acting separately in the manner hereinbefore provided, to direct a recess not beyond the next day at the hour of 1 o'clock p. m."

This joint rule dates from February 6, 1865, when, in the Senate, Mr. Lyman Trumbull, of Illinois, presented it as the report of a joint committee to whom was referred the subject. The first paragraph was similar to the resolution adopted in 1861, but in certain respects differed materially. (See Journal of February 5, 1861, second session Thirty-sixth Congress, p. 273.) The other paragraphs appear to be new. The debate indicates that the new joint rule was proposed to obviate difficulties occasioned by the status of some of the States recently in secession. (Second session Thirty-eighth Congress, Journal, p. 200; Globe, pp. 608, 628.) At this time also the House and Senate passed a joint resolution "declaring certain States not entitled to representation in the electoral college." The President signed this joint resolution, but in a message disclaimed all right of the Executive to interfere in the canvassing or counting of the electoral vote. (Journal, p. 213; Globe, p. 711.)

On February 10, 1869, Mr. Speaker Colfax, speaking of Joint Rule 22, said it was adopted in 1865 because it was feared that in the troublous condition of the country there might be a disastrous repetition of the scenes of confusion witnessed during the electoral count of 1857. (Globe, third session Fortieth Congress, pp. 1066, 1067.)

<sup>1</sup> Globe, p. 1296.

<sup>2</sup> Globe, pp. 1296, 1297.

<sup>3</sup> Schuyler Colfax, of Indiana, Vice-President.

1952. Proceedings of the electoral count of 1873, continued.

Under the former joint rule for counting the electoral vote the Vice-President held that objection to the vote of a State, even for a Constitutional reason, should be made at the time the vote was opened and counted.

After the two Houses had separately considered objections raised during the electoral count of 1873, they informed one another of their conclusions by message, and the House by message informed the Senate of its readiness to receive them in order to proceed with the count.

At the electoral count of 1873 the Vice-President, in accordance with the previous practice, not only announced the state of the vote, but declared those elected.

The Vice-President held, in 1873, that an appeal might not be taken in the joint meeting for counting the electoral vote.

Later, after the two Houses had acted individually on the objections, after they had transmitted to one another by message copies of the resolutions embodying their respective conclusions,<sup>1</sup> and after the House had further informed the Senate by message that it was ready to receive them "to proceed again with the counting of the electoral votes," the Senate appeared in the Hall of the House and the Vice-President resumed the chair, and after the actions of the two Houses had been reported, said:

Therefore, by the twenty-second joint rule, there being a nonconcurrence between the two Houses upon the three votes cast in the State of Georgia for Horace Greeley for President of the United States, they can not be counted; and in accordance with the same joint rule the vote of Mississippi will be counted.

The tellers having resumed the counting and having reached the State of Missouri, Mr. Oliver P. Morton, of Indiana, a Senator, called attention to the fact that the certificates of the State of Georgia showed that votes had been cast for citizens of that State for both President and Vice-President, in violation of the Constitution, and made the point that an objection on this account, although not made when the returns from Georgia were opened, was in order if made before the final announcement of the counting of all the votes.

The Vice-President held that the objection came too late,<sup>2</sup> under the terms of the joint rule which provided for the settlement of questions arising over the vote of any State.

Mr. Matthew H. Carpenter, of Wisconsin, a Senator, as a parliamentary inquiry, asked if it would be in order to take an appeal from the decision of the Chair.

The Vice-President said:

The Senator himself will see that there could not be an appeal taken in a joint meeting of the two Houses; but if any point can be made on which the two Houses can be required to divide, the Chair will entertain it. The language of the joint rule is so emphatic that the Senator from Wisconsin will see that when a thing is directed to be done at a particular time, it must be done at that time.<sup>3</sup>

<sup>1</sup> Globe, p. 1299.

<sup>2</sup> Globe, p. 1300.

<sup>3</sup> The present law (24 Stat. L., p. 374; also section 1766 of this work) provides: "The President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw."



The count having proceeded, and objections having been made to the counting of the vote of Texas, the Senate withdrew; and, the two Houses having separately passed upon the objections, the joint convention reassembled. The conclusions of the two Houses having been announced, the Vice-President announced that under the rule, the two Houses concurring, the vote of Texas could be counted.

In a similar manner objections to the votes of the States of Arkansas and Louisiana were considered, and the votes of these States were excluded.

The Vice-President, at the conclusion of the count and after he had announced the result, said:

Wherefore, I do declare that Ulysses S. Grant, of the State of Illinois, having received a majority of the whole number of electoral votes, is duly elected President of the United States for four years commencing, \* \* \*.<sup>1</sup>

A similar declaration was then made as to the Vice-President.

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<sup>1</sup>Journal, p. 384; Globe, p. 1306.