

Chapter XII.

ELECTORATES IN NEW STATES AND TERRITORIES.

1. Admission of Members after passage of act admitting State. Sections 396–399.
 2. Delegates from portions of the Northwest Territory. Sections 400–401.
 3. Delegates admitted after portion of Territory becomes a State. Sections 402–404.
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396. The House declined to admit the Member-elect from Illinois until the State had been formally admitted to the “Union.

The Speaker asked the decision of the House when a Member-elect from a State not yet admitted to the Union presented himself to be sworn.

On November 19, 1818,¹ Mr. John McLean, Representative from Illinois, being in attendance, the Speaker stated to the House a difficulty which he felt in deciding whether or not to administer the oath to Mr. McLean, in the absence of action by Congress on the admission of the State.

Objection was made, especially by Mr. Timothy Pitkin, of Connecticut, who thought that before admitting a Representative to a seat, the question whether the people who elected him were a State ought to be decided.

The question being put, it was decided that the Speaker should not administer the oath. Then the House ordered the constitution of Illinois referred to a select committee.

On the following day that committee reported a joint resolution declaring the admission of the State of Illinois into the Union, on an equal footing with the original States. This was passed by the Senate, and on December 4 a message was received from the President announcing his signature.

Thereupon Mr. McLean produced his credentials, and the oath was administered to him.

397. The House declined to admit the Member-elect from Michigan except as a spectator—until the act admitting Michigan to the Union had become a law.

It is not necessary that a State be admitted to the Union before it may elect a Representative to Congress.

¹Second session, Fifteenth Congress, Journal, pp. 22, 25, 61, Annals, pp. 296, 297, 306–311, 342.

On December 16, 1835,¹ the Speaker submitted to the House the following communication:

WASHINGTON, *December 15, 1885.*

SIR: Inclosed is a certificate of my election as a Representative of the State of Michigan in the Congress of the United States. It is my desire that the same may be presented to the consideration of the body over which you have the honor to preside.

I am, with great respect, your obedient servant,

ISAAC E. CRARY.

Hon. JAMES K. POLK,

Speaker of the House of Representatives.

As the question of the admission of Michigan into the Union was still pending, a question was raised and the consideration of the subject went over until December 28, when Mr. Samuel Beardsley, of New York, under suspension of the rules, offered this resolution:

Resolved, That Isaac E. Crary, who claims to have been duly elected a member of this House, be admitted as a spectator, within the hall, during the sittings of the House.

Mr. Beardsley stated that this resolution was in accordance with the precedent at the time when the admission of the State of Tennessee was pending.

The resolution was agreed to by the House.

On January 27, 1837,² the bill entitled "An act to admit the State of Michigan into the Union on an equal footing with the original States," passed by the two Houses of Congress, having been approved and signed by the President of the United States, and the certificate of the election of Isaac E. Crary as Representative from the State of Michigan in this House having been communicated to the House at the last session of Congress, to wit, on the 17th of December, 1835, and the said Isaac E. Crary being in attendance. A motion was made by Mr. Francis Thomas, of Maryland, that the oath appointed by law to be taken by Members of the House of Representatives be administered to the said Isaac E. Crary; and that he thereupon take his seat as a Representative of the State of Michigan in this House.

A motion was made by Mr. John Robertson, of Virginia, that this motion, together with the whole subject of the legality of the election of a Member of the House from the State of Michigan, be referred to the Committee of Elections.

Mr. Robertson said that the election by which Mr. Crary claimed his seat took place in October, 1835. At that time Michigan was a Territory, and she continued to be such until yesterday, when she was admitted into the Union. In this matter subsequent recognition of Michigan as a State could not stand in the place of previous consent, because the boundaries of Michigan were uncertain until fixed by Congress. That was a preliminary act, necessary before Michigan could lawfully frame a State government. Under the ordinance of 1787, Michigan must of necessity remain a Territory until admitted as a State, therefore, remaining a Territory until admission as a State, there was no right to representation at the time of the election of Mr. Crary, and his election could not be valid.

¹First session, Twenty-fourth Congress, Journal, pp. 71, 120, 121; Debates, pp. 1964, 2102, 2103

²Second session Twenty-fourth Congress, Journal, pp. 290, 291; Debates, pp. 1504–1509.

The previous question being ordered, the amendment of Mr. Robertson fell,¹ and Mr. Thomas's motion was agreed to, yeas 150, nays 32.

Mr. Cray was thereupon sworn, and took his seat.

398. The Senate declined to admit the persons bearing credentials as Senators-elect from Tennessee until that State had been admitted to the Union.—On June 1, 1796² the Senate declined to admit William Blount and William Cocke, who produced credentials as Senators from the State of Tennessee. That State had not yet been admitted to the Union.

399. The Senate election case of James Shields, of Minnesota, in the Thirty-fifth Congress.

The Senate declined to admit a Senator-elect from Minnesota until a formal act of admission had been passed by Congress.

On February 25, 1858,³ in the Senate, Mr. John J. Crittenden, of Kentucky, presented the following letter:

WASHINGTON, *February 24, 1858.*

SIR: I beg leave to offer a few reasons to show that Minnesota is one of the sovereign States of this Union. My first proposition is that there are only two forms of political organization under which a community of American citizens can legitimately exist within the jurisdiction and under the Constitution of the United States. The one is the organization of a Territory of the Union; the other that of a State of the Union. These are the only determinate shapes into which political communities can be molded under our Constitution. Each has its appropriate place in our federal system. A community of American citizens living under a Territorial organization is in direct and legitimate connection with the Federal Government. That same community, transformed into a State, is also in direct legitimate connection with the Federal Government. In the transition from a Territory to a State, there is no point of time at which this connection can by any possibility be broken. The Territorial government continues in full force until it is superseded by a State government; and whenever the people constitute themselves lawfully into a State, it is, *Io instanti*, a State of the Union. There is no such political anomaly as a State out of the Union, or not yet in the Union. These erroneous terms have been applied so vaguely to communities whose condition is not easily determined that the public begin to think there must be some intermediate provisional, probationary state, in which communities are sometimes kept on their passage from the condition of Territories to that of sovereign States of the Union. California was denominated not many years ago a State out of the Union. Minnesota is, I suppose, at present considered by some a State not yet in the Union, or, perhaps, a provisional State. Certainly the Representatives of Minnesota are at present in a provisional dilemma, not knowing whether they represent a State in the Union or out of the Union.

I now beg leave to refer you to the law of 1857⁴ authorizing the people of Minnesota to form a State government. The first section contains the following language: "The inhabitants of Minnesota are hereby authorized to form for themselves a constitution and State government by the name of Minnesota, and to come into the Union on an equal footing with the original States, according to the Federal Constitution." Here the authority is absolute and unconditional, first, to form a constitution and State government; secondly, to come into the Union on an equal footing with the original States—authority to make a State and authority to come into the Union. No language could be more positive; no authority could be more plenary; no act could be more determinate. The people have performed their engagements in good faith, and they have a right to expect a like compliance on the part of Congress. These engagements, too, affect the most sacred of all political rights—the constitutional rights of a sovereign State. The third section of the Minnesota enabling act strengthens and corroborates this position. It provides that a convention of delegates shall assemble at the capital of said Territory on the second Monday of July next (1857), and first determine by a vote whether it is the wish of the people of the proposed State

¹This was the effect of the previous question on a pending amendment at that time.

²First session Fourth Congress, Contested Elections in Congress, from 1789 to 1834, p. 868.

³First session Thirty-fifth Congress, *Globe*, pp. 861–867.

⁴Act approved February 26, 1857, 11 Stat. L., p. 166.

to be admitted into the Union "at that time." Mark the language—not thereafter; not upon the happening of any future contingency, but "at that time," to wit, on the second Monday in July, 1857; "and if so,"—that is, if they shall so determine—"shall proceed to form a constitution and to take all necessary steps for the establishment of a State government in conformity with the Federal Constitution, subject to the approval and ratification of the people of the proposed State."

Here two things are to be specially observed: First, the determination to become a State at that time; not the determination at that time to become a State, but a State at that time. Second, the submission to the approval and ratification of the people. When was Minnesota to become a State? At that time. How was her constitution to be ratified? By submission to the people. She has complied with every requirement. She entered the Union at the time prescribed; her constitution is ratified in the manner prescribed; and yet she is now as completely postponed and ignored as if she had disregarded all her obligations. Permit me to cite two precedents, which I hope will prove conclusive in this case. In 1802 an enabling act was passed for Ohio somewhat similar to, but not so decisive as, the Minnesota act. The authority given was to form a constitution and State government, and then follows this language: "The State, when formed, shall be admitted into the Union on the same footing with the original States." This was then considered an authorized admission of the State, and the only act of admission that ever took place in the case of Ohio, and that State is now in the Union under and by virtue of the authority of that enabling act.

The enabling act in the case of Indiana contains the following language: "The State, when formed, shall be admitted into the Union." Mark the difference in the two acts. In the case of Minnesota authority is given to come in at the present time. In the case of Indiana a promise is given for her admission at some future time; under the law Indiana adopted a constitution and elected Representatives, as Minnesota has done.

On the 2d December, 1816, Mr. Hendricks, Representative from the new State, presented his credentials in the House of Representatives, was sworn in, was appointed on a committee, and was allowed to vote and act as a Member of that body; and yet it was not until ten days afterwards (on the 12th of the same month) that a joint resolution was passed by both branches of Congress formally admitting Indiana. This kind of resolution was then considered form—nothing but mere form—something which Congress has the power to observe or omit at pleasure, but something with which the State has no concern, and which can not affect its right. This was then the opinion of John C. Calhoun, at that time a Member of the other House; and this, we may fairly presume, would be his opinion if he were a Member of the Senate now. When the precedent was established Daniel Webster was also a Member of the House, and gave it the weight of his authority. But Minnesota stands upon far stronger grounds than Ohio or Indiana the ground of Congressional authority. If this authority is good, Minnesota can not fail. This is a great question—a question of constitutional right, of national faith. Congressional faith, I sincerely hope, will be held sacred and inviolate in the case of Minnesota by the prompt admission of her Representatives. My sense of duty to my constituents compels me, through you, to make this appeal to the Senate.

I have the honor to be, your obedient servant,

JAMES SHIELDS,
Senator from Minnesota.

HON. JOHN J. CRITTENDEN.

Mr. Crittenden also presented credentials in due form, showing the election of Mr. Shields by the legislature of Minnesota on December 19, 1857.

A discussion arose as to whether or not Minnesota was a State in the Union by virtue of the enabling act, or whether an act of admission would be necessary. Mr. Crittenden, in arguing that there had been no act of admission, cited the case of Louisiana in addition to those of Ohio and Indiana quoted by Mr. Shields.

A motion that the subject lie on the table was disagreed to—yeas 22, nays 26.

Then, after lengthy debate, the Senate, on motion of Mr. Robert Toombs, of Georgia, agreed to the following:

Resolved, That the question of the admission of James Shields to a seat in this body, as a Senator from the State of Minnesota, be referred to the Judiciary Committee, with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws.

The Judiciary Committee consisted of Messrs. James A. Bayard, of Delaware; Robert Toombs, of Georgia; George E. Pugh, of Ohio; Judah P. Benjamin, of Louisiana; James S. Green, of Missouri; Jacob Collamer, of Vermont; and Lyman Trumbull, of Illinois. On March 4, 1858,¹ Mr. Bayard submitted the following report:

Having considered the question as to which they were by the the foregoing resolution instructed to inquire, the committee have unanimously adopted the following resolution:

Resolved, That Minnesota is not a State of the Union under the Constitution and laws.

Minnesota was admitted into the Union by the act approved May 11, 1858,² and thereupon her Senators-elect were admitted.

400. The election case of James White, Delegate from the Territory south of the Ohio, in the Third Congress.

In 1794 the House admitted a Delegate on the theory that it might admit to the floor for debate merely anybody whom it might choose.

The office of Delegate was established by an ordinance of the Continental Congress, confirmed by a law of Congress.

The House decided in 1794 that the oath should not be administered to a Delegate.

The legislation as to the privileges of the Delegate was enacted after the House had recognized the office.

In 1794 the Delegate seated by the House was elected by the legislature of the Territory and not by the people.

On November 11, 1794,³ the credentials of James White as a Representative of the Territory of the United States south of the river Ohio, were laid before the House and referred to a select committee, who, on November 14, made the following report:

That, by the ordinance for the government of the Territory of the United States northwest of the river Ohio, section 9, it is provided "that, so soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority to elect representatives to represent them in a general assembly," and by the twelfth section of the ordinance, "as soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority, by joint ballot, to elect a Delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government." Full effect is given to this ordinance by act of Congress August 7, 1789.

That, by the deed of cession of the Territory south of the river Ohio to the United States, in the fourth article, it is also provided "that the inhabitants of the said Territory shall enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the Western Territory—that is to say, Congress shall assume the government of the said Territory, which they shall execute in a manner similar to that which they support in the Territory west of the Ohio, and shall never bar or deprive them of any privilege which the people in the Territory west of the Ohio enjoy."

The cession, on these conditions, was accepted by act of Congress on the 2d of April, 1790.

By an act passed the 26th of May, 1790, for the government of the Territory of the United States south of the river Ohio, it is enacted "that the inhabitants shall enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the Territory of the United States northwest of the river Ohio. And the government of the said Territory south of the Ohio shall be

¹ Globe, p. 957, Senate Report No. 104.

² 11 Stat. L., p. 285.

³ Second session Third Congress, contested elections in Congress from 1789 to 1834, p. 85.

similar to that which is now exercised in the Territory northwest of the river Ohio, except so far as is otherwise provided in the conditions expressed in an act of Congress of the present session, entitled 'An act to accept a cession of the claim of the State of North Carolina to a certain district of western territory.'"

The committee are of opinion that James White has been duly elected as Delegate from the Territory of the United States south of the Ohio, on the terms of the foregoing acts. They therefore submit the following resolution:

Resolved, That James White be admitted to a seat in this House as a Delegate from the Territory of the United States south of the river Ohio, with a right of debating, but not of voting.

This resolution gave rise to considerable debate, it being urged in opposition that the Constitution provided for no such admission to the House, and that it would be more proper to admit him to the Senate. It was said, also, that he should be admitted only in accordance with a law of Congress. In opposition it was maintained that the House might admit and give the right of debating to whomsoever it might please, as it might admit an advocate to plead in any particular case, and that a law was not necessary, since they need not and ought not to consult the Senate in such a matter.

On November 18 the House agreed to the report of the committee.

A question then arose as to whether or not the oath should be administered to Mr. Smith.

The question being taken, it was decided—yeas 32, noes 42—that the Delegate should not take the oath, the argument that his inability to vote rendered the oath unnecessary.¹

During this session a bill was passed allowing the Delegate pay and the privilege of franking letters.² This legislation was in the form of a bill extending the franking privilege specifically to James White and providing for the same compensation received by a Member.

401. The election case of Narsworthy Hunter, Delegate for Mississippi Territory, in the Seventh Congress.

In 1801 the oath was administered as a matter of course to a Delegate from a Territory.

On December 21, 1801,³ the House, on report of the Committee on Elections, to whom had been referred the credentials of Narsworthy Hunter as Delegate from Mississippi Territory, decided that the Territory was entitled to a Delegate, with a right to debate, but not to vote, and that Mr. Hunter was elected such Delegate. As in the case of James White, the title of the territory to a Delegate was referred back to the ordinance of 1787, certain provisions of which were by acts of April 7, 1798, and May 10, 1800, applied to Mississippi Territory.

Mr. Hunter had appeared on December 7, at the time of the organization of the House, and had taken the oath with the Members.⁴

¹The compiler of the election cases has inserted a footnote explaining that in practice it was usual (in 1834, when the work was published) for the Delegates to be sworn. See also Section 401.

²1 Stat. L., p. 403.

³First session Seventh Congress, Contested Elections in Congress from 1789 to 1834, p. 120

⁴Journal, p. 5.

402. The election case of Paul Fearing, Delegate from the territory northwest of the river Ohio, in the Seventh Congress.

A Delegate was not dispossessed of his seat because a portion, but not all, of his territory had been erected into a State.

On January 31, 1803,¹ the Committee on Elections reported on the following proposition, which had been referred to them previously:

That inasmuch as the late territory of the United States northwest of the river Ohio have, by virtue of an act of Congress passed on the 1st day of May, 1802,² formed a constitution and State government, and have thereby and by virtue of an act of Congress aforesaid become a separate and independent State, by the name of "Ohio," that Paul Fearing, a Member of this House, who was elected by the late territorial government of the territory northwest of the river Ohio, is no longer entitled to a seat in this House.

The committee reported the following:

Resolved, That Paul Fearing, the Delegate from the territory northwest of the river Ohio, is still entitled to a seat in this House.

The report was laid on the table.

Mr. Fearing has taken his seat on the first day of the Congress.³ The Member from the State of Ohio did not appear until the next Congress.⁴

403. The election case of Doty v. Jones, from Wisconsin Territory, in the Twenty-fifth Congress.

The term of a Delegate need not necessarily begin and end with the term of Congress.⁵

In 1839 the Committee on Elections held that the office of Delegate ceased when the Territory ceased to exist as a corporation by becoming a State.

At the session of 1838–39⁶ the Committee on Elections reported on the case of Doty v. Jones, from Wisconsin Territory. This case involved merely a question as to when Mr. Doty should take the seat.

¹Second session Seventh Congress Contested Elections in Congress, from 1789 to 1834, p. 127; Journal, pp. 297, 313, 314; Annals, pp. 413, 448.

²This act, actually approved April 30, 1802 (2 Stat. L., p. 174), did not include in the new State of Ohio all the territory of the "late territory of the United State northwest of the river Ohio," but provided "that all that part of the territory of the United States northwest of the river Ohio heretofore included in the eastern division of said territory and not included within the boundary herein prescribed for the said State is hereby attached to and made a part of the Indiana Territory from and after the formation of the said State." Indiana had been organized by act of May 7, 1800 (2 Stat. L., p. 58). Indiana was not allowed a Delegate until the act of February 27, 1809 (second session Tenth Congress, 2 Stat. L., p. 525). So it is evident that Mr. Fearing would remain as the Delegate for an increment of population left out by the new boundaries of Ohio. The act of May 1, 1802, provided that "the said State, when formed, shall be admitted into the Union upon the same footing with the original States in all respects whatsoever."

³Journal, p. 5.

⁴First session Eighth Congress, Journal, p. 403 (Gales and Seaton ed.).

⁵But since 1848 (9 Stat. L., p. 349) the acts admitting States have required that the term of the delegate should begin and end with a single Congress.

⁶Third session Twenty-fifth Congress, 1 Bartlett, p. 6; Rowell's Digest, p. 107; Report No. 7, Journal, p. 191.

In October, 1835, Mr. George W. Jones had been elected Delegate from the Territory of Michigan for a term extending, under the existing law for Michigan, for two years from the date of his certificate. He took his seat in December, 1835, and would naturally have served until about that time in 1837. But by act of June 15, 1836, Michigan was admitted to the Union on condition that she should by convention ratify certain boundaries, which was done December 15, 1836. The committee therefore considered that the Territory of Michigan ceased to be on June 15, 1836, and that Mr. Jones ceased to be her Delegate on that day, which was about a year and a half before his term would naturally have expired.¹

In October, 1836, Mr. Jones was elected Delegate from the adjacent Territory of Wisconsin, which had just been organized. The act of organization provided that he should serve "for a term of two years." Mr. Jones took his seat December 5, 1836, and the term of two years would, if computed from the time of election or qualification, expire in October or the 1st of December, 1838.

And so, naturally, Mr. James D. Doty, elected on September 10, 1838, would take his seat at the December session of 1838, which was the last and not the first or long session of the Congress, and consequently would finish out the current Congress and sit for the first half of the next Congress.

The natural objection then arose that this should not be, because the term of the Delegate, like the term of the Member from a State, should be for the term of the Congress, and should not comprise a portion of two Congresses. In support of this contention a clause of the act of March 3, 1817, was cited, wherein it was provided that Delegates "shall be elected every second year for the same term of two years for which Members of the House of Representatives of the United States are elected." Furthermore, there was a question as to when Mr. Jones's term as Delegate from Michigan expired, and so that term might work out the time of beginning for the term of Mr. Doty.

The committee did not consider that the law of 1817, even supposing it not to have been modified by the subsequent act organizing Wisconsin and providing simply that the Delegate should "serve for a term of two years," necessarily meant that Delegates should serve the same two years for which Members of the House were elected. The committee would construe it to mean that the duration of service should be the same, but not necessarily contemporaneous. Although not entirely confident of this construction, the committee found it fortified by the fact that previous to that law Delegates were elected annually. The Constitution was silent as to Delegates, which were mere creatures of law, whose terms of service might be long or short and commence and terminate at such periods as Congress might dictate. The law organizing Wisconsin, unlike the Michigan law, did not specify when the term should begin; but in cases where no time is specified for the performance of a duty it is common to construe that it is to be performed forthwith. Any other construction would, when Mr. Jones was elected Delegate from Wisconsin, have left the Territory unrepresented for part of a Congress, while he

¹ Congress actually passed (on January 26, 1837) another act for admission of Michigan as a State, and Isaac E. Cray, elected Representative from the State, was not permitted to take his seat until January 27, 1837 (2d sess. 24th Cong., Journal, pp. 288, 290; Globe, p. 134.)

would have been awaiting the beginning of the term of the new Congress on March 4, 1837. So the committee decided that Mr. Jones's term did not last until March 4, 1839, and therefore reported the following resolution, which was agreed to by the House—yeas 165, nays 25:

Resolved, That James Duane Doty is entitled to a seat in this House as a Delegate from Wisconsin Territory, and that George W. Jones is not so entitled.

404. The election case of Henry H. Sibley, claiming a seat as Delegate from Wisconsin, in the Thirtieth Congress.

The House admitted a Delegate from a county left under the old Territorial laws after the remainder of Wisconsin Territory had become a State.

By the act of May 29, 1848,¹ Wisconsin, which had been a Territory, with a Territorial Delegate, was admitted to the Union as a State. But the boundaries of the new State left out a portion of the old Territory of Wisconsin lying beyond the St. Croix River, comprising a population of about 4,000 and constituting what had been a judicial district of the old Territory, organized as an entire county. The Delegate who had represented Wisconsin Territory had resigned when the State was formed. So the people in the portion left without the State boundaries had no representation in Congress.

The governor of the Territory having become an United States Senator from the new State, the secretary of the Territory, upon whom under the law of the Territory the duties devolved, removed to the region beyond the St. Croix and assumed the duties of governor. He issued his proclamation as acting governor, ordering a special election to fill the vacancy caused by the resignation of the Delegate who had represented the whole Territory of Wisconsin. And in pursuance of that proclamation the people beyond the St. Croix elected Henry H. Sibley, who in due time presented his certificate of election, under the hand of the acting governor and with the seal of the "Territory of Wisconsin" attached.

On December 4, 1848,² at the beginning of the second session of the Congress, Mr. Sibley's credentials were presented to the House, but objection was made to swearing him in on his *prima facie* showing, and the credentials were referred to the Committee of Elections.

The majority of the committee reported a resolution that Mr. Sibley be admitted to a seat as Delegate of the Territory of Wisconsin. They argued that these people as part of the old Territory of Wisconsin had once enjoyed the right of representation and that they were still entitled to it by natural right as well as by the usages of the Government. The act of Congress admitting the State of Wisconsin had left them outside its benefits, but had not abrogated any of the old law organizing the Territory, and they were therefore entitled to all their rights under the terms of the law organizing the original Territory of Wisconsin. Those rights had, moreover, been guaranteed by the ordinance of 1787, which had been reaffirmed by Congress. The omission of Congress to repeal the law organizing the Territory of Wisconsin, as well as the failure to make any other law for the government of

¹ Second session Thirtieth Congress, House Report No. 10; 1 Bartlett, p. 102; Rowell's Digest, p. 127.

² Globe, p. 2.

the people beyond the St. Croix, were proof conclusive that the old Territorial law was intended to operate in the residuum of the Territory. Moreover, acting on the authority of the State Department, the officers of the present Territory were holding the offices under the original appointments made before the State of Wisconsin was formed. The committee cited the case of Delegate Paul Fearing, from the Territory of Ohio.

The minority of the committee contended that the formation of the State of Wisconsin annulled by implication the whole political organization of the Territory of Wisconsin. A special repealing clause was not necessary and had not been inserted in the laws organizing other States. Neither had it been usual to grant Delegates to Territories in the first stages of their existence. When the people had become numerous enough to entitle them to legislative assemblies it had been usual to allow them Delegates in Congress. The authority of the precedent of Paul Fearing was denied. The fact that the people of the residuum county would be left without laws might be a matter to be remedied by law, but was not such as to require the interposition of the House in the manner proposed.

On January 15, by a vote of 124 to 62, the House agreed to the resolution admitting Mr. Sibley as the Delegate of the Territory of Wisconsin.¹

405. The election cases of Hugh N. Smith and William S. Meservey, claiming seats as Delegates from New Mexico in the Thirty-first Congress.

The House declined to admit a Delegate from New Mexico before the organization of the Territory had been authorized by law.

The House declined to give prima facie effect to the credentials of a Delegate elected by a convention in an unorganized Territory.

The House held that there should be prior legislation by Congress before the admission of a Delegate.

On February 4, 1850,² the credentials of Hugh N. Smith, as Delegate from the Territory of New Mexico, were presented to the House. The credentials were in the following form:

Be it remembered that in the convention of delegates chosen from the seven different counties of New Mexico to assemble in the city of Santa Fe on the 24th day of September, A.D. 1849, for the purpose of forming and proposing the basis of a government which the people of New Mexico desire should be granted to them by the Congress of the United States, and for the purpose of choosing a Delegate to represent New Mexico in the House of Representatives of the Thirty-first Congress of the United States, Hugh N. Smith was chosen by a majority of all the convention, and declared duly elected said Delegate.

Given under our hands, at Santa Fe, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-nine.

ANTONIO JOSÉ MARTINEZ,
Presidente de la Convension.

JAMES H. QUINN, *Secretary.*

The House did not swear in the Delegate on this prima facie showing, but referred the credentials to the Committee on Elections.

This committee reported on April 4. It was ascertained that New Mexico was acquired by the treaty of Guadalupe Hidalgo; that previously it had been a

¹ Globe, p. 260.

² First session Thirty-first Congress, Journal, p. 463; Globe, pp. 279, 412; 1 Bartlett, p. 109.

department of Mexico, governed by its own legislature and having representation in the National Congress. But when acquired by the United States it came as territory only, not retaining its old political organization. An army officer was stationed there as military commander, but there was no political organization known to the laws. The convention which chose Mr. Smith Delegate was summoned by proclamation of the army officer in command.

The further fact appeared that the larger portion of the Territory was claimed by the State of Texas and had been so claimed since 1836. This claim still existed although not admitted by the Executive of the United States. Mr. Smith, the Delegate-elect, was himself a resident of the portion claimed by Texas, as were the larger portion of his constituents.

Without considering the claim of Texas, for the time being, the majority of the committee came to the conclusion that Delegates admitted by the House had in every case been chosen in accordance with laws enacted by Congress. The case of Mr. Sibley, of Wisconsin, was not an exception, since he was admitted on the theory that a Territory of Wisconsin still existed. The admission of Mr. Smith would be construed as a quasi recognition of New Mexico as an organized government, a proceeding not within the constitutional power of the House. To admit Mr. Smith simply as the representative of the inhabitants would be anomalous and unwise.

The minority of the committee contended that the privilege of citizens of a Territory or portion of the Union not organized into a State to have a Delegate depended neither on the Constitution nor law, but on the pleasure of the House alone. The discretion of the House should be exercised in favor of the right of representation. New Mexico was a populous region, whose people had enjoyed an organized political existence under the former sovereignty. While her former condition could not be considered as establishing her claim to representation, yet it showed her capacity for self-government and constituted a strong argument to control the discretion of the House, so that she might not be kept in a worse situation than she was in before.

As to the justness of the claim of Texas the majority passed no opinion. If it was just certainly the people were already represented, and might not be further represented. Whether just or not the claim existed, and it was not the part of the House to express judgment on it by admitting Mr. Smith. The minority held that the claim of Texas might be admitted as just, and yet Mr. Smith might be admitted properly as representing a residuum of people without the boundaries claimed by Texas. Furthermore, Texas had not enforced her claim and exercised no authority over the disputed territory; and New Mexico should not be neglected because of the mere claim of Texas.

The majority of the committee recommended the following:

Resolved, That it is inexpedient to admit Hugh N. Smith, esq., to a seat in this House as a Delegate from New Mexico.

The minority proposed the following:

Resolved, That the said Hugh N. Smith be admitted to a seat in the House of Representatives of the United States as a Delegate from New Mexico.

The report was debated at length on May 22 and July 15–18.¹ Besides the merits of the case, there seems to have developed some considerations relating to the question of slavery and a disposition to resort to dilatory tactics. Finally, on July 19, the whole subject was laid on the table, by a vote of 105 yeas, 94 nays.

406. On December 10, 1850,² the credentials of William S. Meservey as Delegate from the Territory of New Mexico were presented and referred to the Committee on Territories, no motion being made to swear in Mr. Meservey. Later the reference was changed to the Committee on Elections, which reported on February 6, 1851.³ On May 25, 1850, before a decision had been reached by the House in the case of Mr. Smith, another convention had assembled at Santa Fe and established a constitution for a State government. On June 20, 1850, the voters of the Territory ratified the constitution and elected officers, including a Representative in Congress. Mr. Meservey was chosen to this office. The State officers issued a credential to Mr. Meservey as a “Representative,” but he claimed a seat as a “Delegate.” The committee, after commenting on this fact, went on to argue that it would be a dangerous precedent to admit a Delegate not provided for by law of Congress and would overrule the usages of sixty years. Moreover, there was now in force an act of Congress providing for a Territorial Delegate from New Mexico. This act became a law on September 9, 1850, after the decision in Mr. Smith’s case. So the committee reported against the admission of Mr. Meservey. The report was not acted on by the House.

407. The election case of Almon W. Babbitt, claiming a seat as a Delegate from the so-called State of Deseret, in the Thirty-first Congress.

The House decided it inexpedient to admit a Delegate chosen by a community not yet made a Territory by law.

On April 4, 1850,⁴ the Committee on Elections reported on these credentials:

PROVISIONAL STATE OF DESERET, ss:

I hereby certify that, pursuant to a joint resolution passed by both houses of the general assembly of this State, Almon W. Babbitt, esq., was on the 5th day of July, 1849, elected by both branches of the general assembly a Delegate to the Congress of the United States, to present the memorial of said general assembly and otherwise represent the interests of the inhabitants of this State in Congress.

Given under my hand and the great Seal of the State of Deseret, at the city of the Great Salt Lake, this twenty-fifth day of July, 1849.

[SEAL.]

WILLARD RICHARDS,
Secretary of State.

Mr. Babbitt had not attempted to take a seat on these credentials in the first instance, and after examination the committee found that the memorial presented did not ask the admission of the Delegate until “some form of government” had been adopted. Moreover, the so-called State of Deseret had been formed by an irregularly called convention of citizens representing a region not yet organized by law of Congress. To admit Mr. Babbitt would be for the House to give a quasi recognition of the legal existence of the State of Deseret and an implied ratification

¹ Journal, pp. 1142, 1150; Globe, pp. 1038, 1375, 1383, 1386, 1392, 1399, 1411.

² Second session Thirty-first Congress, Globe, p. 22.

³ 1 Bartlett, p. 148; Rowell’s Digest, p. 135.

⁴ First session Thirty-first Congress, 1 Bartlett, p. 116; Rowell’s Digest, p. 130.

of its constitution. Such recognition and ratification were within the power of Congress alone.

So the committee recommended this resolution:

Resolved, That it is inexpedient to admit Almon W. Babbitt, esq., to a seat in this body as a Delegate from the alleged State of Deseret.

On July 18, 19, and 20¹ the resolution was debated in Committee of the Whole. There were arguments in favor of admitting a representative of the people of Deseret and the position of the committee as to the matter of recognition was combatted. The slavery question also had some bearing on the result.

Finally, by a vote of yeas 104, nays 78, the resolution was laid on the table.

408. The election case of Fuller v. Kingsbury, from the Dakota portion of the old Territory of Minnesota, in the Thirty-fifth Congress.

Duty of the Speaker as to recognition of a Delegate after the Territory has been admitted as a State.

On May 27, 1858,² several days after the Representatives from the State of Minnesota had been qualified, one of them, Mr. James M. Cavanaugh, rising to a question of privilege, offered this resolution:

Resolved, That the Committee on Elections be authorized to inquire into and report upon the right of W. W. Kingsbury to a seat upon this floor as Delegate from that part of the Territory of Minnesota outside the State limits.

In the debate a question was raised as to recognition of Mr. Kingsbury, and the Speaker³ said he had continued to recognize him as Delegate in accordance with past precedents.

Thereupon an amendment was adopted providing:

And in the meantime no person shall be entitled to occupy a seat as a Delegate from said Territory.

This amendment was adopted, and the resolution as amended was agreed to.

On June 3,⁴ when the committee had reported in favor of allowing Mr. Kingsbury to retain his seat, a motion was proposed to lay the report on the table, and a question arose as to the effect of agreeing to the motion.

The Speaker said:

The resolution referring the subject to the Committee of Elections provided that the committee be authorized to inquire into and report upon the right of W. W. Kingsbury to his seat upon this floor as Delegate from that portion of the Territory of Minnesota outside of the State limits, and that in the meantime no person should be entitled to occupy a seat as Delegate from the said Territory. The Chair is of opinion that when the committee submitted a report to the House the proviso ceased to operate, and the Chair, following the precedents, without intimating whether the Chair thinks the precedents right or wrong, would recognize the Delegate from Minnesota.

409. The election case of Fuller v. Kingsbury, continued.

After the admission of Minnesota as a State, the House declared portions of the old Territory outside the limits of the State not entitled to a Delegate.

¹Journal, pp. 1153, 1155; Globe, pp. 1413, 1418, 1423.

²First session Thirty-fifth Congress, Journal, p. 932; Globe, p. 2428.

³James L. Orr, of South Carolina, Speaker.

⁴Globe, pp. 2677, 2678.

The State of Minnesota being admitted, the House suspended the functions of the Delegate from the old Territory.

On May 29, 1858,¹ the Committee on Elections reported in the case of Fuller *v.* Kingsbury, of the portion of the former Territory of Minnesota not included within the limits of the new State. The committee, after quoting from the law establishing the Territory, and citing the fact that the Territory of Minnesota had been represented without interruption, by a Delegate elected in conformity with law, say:

It further appears that William W. Kingsbury was regularly elected on the 13th day of October, 1857, as such Delegate, and, in that capacity, was, at the opening of the present session of Congress, admitted to, and has held, a seat in the House of Representatives until the passage of the act of May, 1858, for the admission of the State of Minnesota into the Union, when his right to retain it was brought in question. Of the legality of the election of Mr. Kingsbury as the Delegate from the Territory of Minnesota there seems to be no doubt. * * * The number of inhabitants in the Territory not included in the bounds of the State is not very clearly settled, but, as far as can be learned, it amounts to several thousands, and is said to be rapidly increasing. There were five counties established by law, and two of them fully organized, with the proper officers for regular municipal government. * * *

Does the admission into the Union of a State formed out of a part of the original Territory of Minnesota annul the election of the Delegate, repeal or set aside the law creating the Territory, and all other laws; deprive the people inhabiting that part of the Territory not included in the limits of the new State of the right or privilege of being heard in the House of Representatives by an agent or Delegate; substitute anarchy for a government of law, and resolve society into its original elements? Such is not the opinion of your committee. There is nothing in the act authorizing the people of Minnesota to form a constitution and State government, nor in the act for the admission of the State of Minnesota into the Union, which repeals in anywise the law creating the Territory, or deprives the people inhabiting that part not included in the new State of any rights or privileges to which they were entitled under any laws existing at the time of the admission of that State. It matters not whether one State or half a dozen have been carved out of an organized Territory; if a portion remains, and, more especially, if inhabited, and counties and towns, with their corporate governments, exist, created by law, it would seem to be a most violent presumption to hold that they became *eo instante* upon the admission of the State a disfranchised people—a mere mob or rabble. The fact that the admitted State bears the same name as the Territory may lead to some confusion of ideas, but it does not alter the fact. The existence of the State of Minnesota does not destroy the existence of the Territory of Minnesota, nor deprive the inhabitants of such Territory of any of their rights. No such result can be by implication. The Territorial law must be repealed before such consequences could follow, and even then a grave question would arise here how far such repeal could operate upon the rights of the people.

The committee then cite the cases of Delegates Fearing and Sibley in support of their view.

As to the memorial of A. G. Fuller and his certificate of election under the hands of the county officers of Midway County, in the Territory of Dakota, the majority say that there is no Territory of Dakota authorized to elect a Delegate. The region named as Dakota is admitted to be the residue of the Territory of Minnesota, already represented by Mr. Kingsbury.

Therefore the majority of the committee reported resolutions that Mr. Kingsbury be allowed to retain his seat “as a Delegate from the Territory of Minnesota.”

The minority of the committee base their argument on a question of fact which is disputed. The majority of the committee had said:

The committee are informed, on what they consider good authority, that * * * at the election for Delegate to Congress, the people of this so-called Territory of Dakota, or a part of them, did vote for Mr. Kingsbury for their Delegate, and they so claim him to be, notwithstanding the admission of the State of Minnesota into the Union.

¹First session Thirty-fifth Congress, 1 Bartlett, p. 251; Rowell's Digest, p. 155.

The minority take issue on this point, saying:

On the said 13th day of October, 1857, the people resident in the limits of the State voted entirely to themselves. They elected a Delegate (Mr. Kingsbury), who had opposition; also elected Representatives. On the same day the inhabitants outside said State limits held a separate election for themselves and elected A. G. Fuller their Delegate, said Fuller also having an opponent. The people outside the State limits acted and voted separately and independently; so did the inhabitants within the State.

Section 14 of the act organizing the Territory of Minnesota, approved March 3, 1849, provides that a Delegate to the House of Representatives of the United States may be elected by the voters qualified to elect members of the legislative assembly. The election for governor, State officers, members of assembly, and Representatives, as well as Delegates, was confined to the voters within the limits of the proposed State. No polls were opened for these elections to the people outside the limits of the proposed State.

When the reports were debated, on June 2 and 3,¹ there was controversy over the point, and letters were presented from Territorial officers showing that votes were cast for Mr. Kingsbury in the portion of the Territory outside the limits of the proposed State. But this fact was not settled so conclusively that it could be said to be established.

The minority alleged that Mr. Kingsbury was not a resident of the portion of Minnesota or Dakota which he sought to represent, but that he lived within the limits of the new State. In reply to this it was declared that there was no provision of law requiring a Delegate to be a resident of the Territory he represented.

The minority further urged:

We further find and report that the people residing out of the limits of the proposed State, after being separated, in anticipation of a separate Territorial organization for the remaining Territory, under the new name of Dakota, held an election for a Delegate on the 13th of October, A. D. 1857, as stated in the memorial of A. G. Fuller, when the said A. G. Fuller received a large majority of the legal voters resident in the said Territory, and he holds the best evidence thereof which the present imperfect legal provisions in the Territory will admit of; and, according to the precedent in the case of H. H. Sibley, from Wisconsin, would be entitled to his seat as a Delegate representing the resident citizens on the remaining Territory, who voted for him, and who were not by law allowed to vote for or against W. W. Kingsbury

Therefore the minority recommended that Mr. Fuller be admitted in place of Mr. Kingsbury.

On June 2 and 3² the question was debated at length, the doubt as to whether Mr. Kingsbury had been voted for by the people outside the limits assigned for the new State figuring prominently.

Finally, by a vote of yeas 120, nays 80, the House amended the proposition of the majority of the committee by substituting the following:³

Resolved, That the admission of the State of Minnesota into the Union with the boundaries prescribed in the act of admission operates as a dissolution of the Territorial organization of Minnesota; and that so much of the late Territory of Minnesota as lies without the limits of the present State of Minnesota is without any distinct legally organized government, and the people thereof are not entitled to a Delegate in Congress until that right is conferred on them by statute.

The resolution as amended was then agreed to.

¹ Globe, pp. 2660, 2679.

² Globe, pp. 2660, 2677-2679.

³ Journal, p. 1007.

410. The election case of J. S. Casement, claiming a seat as Delegate from Wyoming, in the Fortieth Congress.

The House declined to give prima facie effect to credentials from a Territory not yet organized.

After the passage of the act organizing the Territory of Wyoming, but before the actual organization, the House declined to admit a Delegate elected before the passage of the act.

On January 12, 1869,¹ Mr. Henry L. Dawes, of Massachusetts, claiming the floor for a question of privilege, presented the credentials of Mr. J. S. Casement, claiming to be Delegate-elect from the Territory of Wyoming, and asked that he be sworn in.

A question being raised, it was admitted that the Territory had not been organized, and that Mr. Casement had not been regularly elected. Thereupon, after debate, the credentials were referred to the Committee on Elections, and Mr. Casement was not sworn in.

On February 23² Mr. Burton C. Cook, of Illinois, presented the report of the committee, as follows:

The Territory is not yet organized. Section 17 of the act to provide for the temporary government for the Territory of Wyoming, approved July 25, 1868, is as follows:

"This act shall take effect from and after the time when the executive and judicial officers herein provided for shall have been duly appointed and qualified: Provided, That all general Territorial laws of the Territory of Dakota in force in any portion of said Territory of Wyoming at the time this act shall take effect shall be and continue in force throughout the said Territory until repealed by the legislative authority of said Territory, except such laws as relate to the possession or occupation of mines or mining claims."

Section 13 of the same act provides as follows:

"A Delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly. The first election shall be held at such times and places and be conducted in such manner as the governor shall appoint and direct, and at all subsequent elections the times, place, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes of the qualified voters, as hereinbefore provided, shall be declared by the governor elected, and a certificate thereof shall be accordingly given."

The election at which J. S. Casement claims to have been elected was held on the 8th day of October, A. D. 1867. The bill above referred to was passed July 25, 1868, and has not yet taken effect, for the reason that the executive and judicial officers provided for in said act have not been duly appointed and qualified. The election laws of Dakota are still in force in that Territory.

The election held on the 8th day of October, A. D. 1867, was not held in pursuance of any law, but was held in pursuance of a call made by a mass meeting, at which certain commissioners were appointed to make arrangements for holding a general election. It is apparent that this election had none of the safeguards provided by law to secure the purity of elections; no one could be punished for illegal voting, or for receiving illegal votes, or for excluding legal votes, or for making false returns; no qualifications of voters had been prescribed by law; not even a residence in the Territory was required; no voting precincts had been established by law. Three persons, who sign their names as commissioners of elections, have made a certificate that the election was held, and that J. S. Casement was elected Delegate to Congress. A copy of this certificate is hereto annexed, marked "A."

The only other evidence adduced before the committee in support of the claim was an affidavit of J. H. Hayfer, a copy of which is hereto annexed, marked "B."

It is not contended that there is any law entitling the claimant to a seat as a Member of this House,

¹Third session Fortieth Congress, Journal, p. 142; Globe, pp. 310, 311.

²House Report No. 30; 2 Bartlett, p. 516. Rowell's Digest, p. 229; Globe, p. 1460.

and it is apparent that, according to law, the first election must be holden in a very different manner and the certificate be given by the governor; but it is insisted that it is a matter within the discretion of the House, and that there are precedents which would justify the admission of the claimant to a seat; and the admission of Members of Congress from Arkansas who were elected before the State constitution was approved by Congress or the State admitted as one of the States, is cited.

This precedent is not in point for the reason that Arkansas was a State in the Union at the time when the first Representatives from that State were admitted to seats in Congress, and the committee find no precedent for the admission of a Member from a State or a Delegate from a Territory which was not organized at the time the Member or Delegate was sworn and admitted to his seat. The Territory of Wyoming is not now organized, and no reason can be given for the admission of the claimant in this case which would not be equally good to sustain the claim of a Delegate from Alaska should a mass meeting be convened at Sitka and a Delegate be elected by such meeting.

Therefore the committee recommended the adoption of a resolution declaring that Mr. Casement was not entitled to a seat.

This report was not acted on by the House.

411. The election case of Mottrom D. Ball, claiming a seat as Delegate from Alaska, in the Forty-seventh Congress.

The House declined to admit a Delegate from an unorganized Territory, although by treaty the people were entitled to the rights of citizens.

A proposition relating to the admission of a Delegate from an unorganized Territory was held not to be a question of privilege.

On December 21, 1881,¹ Mr. Horace F. Page, of California, by unanimous consent, presented the memorial of certain citizens of Alaska, together with a certificate of the election of Mottrom D. Ball as Delegate to the House of Representatives from the Territory of Alaska. These were referred to the Committee on Elections.

On February 28, 1882,² Mr. William H. Calkins, of Indiana, reported³ from the committee this resolution, which was referred to the Committee on Territories:

Resolved, That M. D. Ball be not admitted to a seat in the Forty-seventh Congress as a Delegate from the Territory of Alaska until the Committee on Territories shall report thereon, and that the matter be continued until that time for further action.

The minority of the committee proposed with their views this resolution:

Resolved, That M. D. Ball be admitted to a seat in the Forty-seventh Congress as a duly elected Delegate from the Territory of Alaska, with all the rights and privileges of Delegates from other Territories of the United States.

The majority did not make an argument, but the minority went at length into reasons for seating Mr. Ball. They recited that under the treaty by which Alaska had been ceded it had been stipulated that the inhabitants, except the uncivilized natives, should be "admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

As Congress had passed no act in fulfillment of this obligation, the people of the district had met in election and chosen delegates, who in convention adopted a memorial and elected a Delegate. Reference was made to the case of James White, in 1794, who was seated as a Delegate from the territory south of the Ohio River. The minority summarized as follows the reasons for admitting Mr. Ball: (1) Representation is one of certain rights and advantages to which this people are

¹ First session Forty-seventh Congress, Journal, p. 193; Record, p. 243.

² Journal, p. 685.

³ House Report No. 560.

entitled and were entitled at the time of their action; (2) having the vested title to the present enjoyment of this right, they were debarred from its possession through the failure of the party obligated to its accordance to furnish the means whereby they might attain it; (3) being so wrongfully debarred of an essential, a guaranteed, and an inherent right, by the fault of the authority that should have extended it, they set about its acquisition through the exercise of means recognized as authoritative under similar circumstances; (4) under such a condition of fact it is the duty of this House to ratify their act and make it legal and valid to the end desired; (5) not only is this duty plain, but the honor and good faith of our Government is involved in this recognition. And it is further shown to be advisable on the mere ground of expediency.

On March 28, 1882,¹ Mr. William H. Calkins, of Indiana, as a question of privilege, proposed to call up the report of the Committee on Elections in the case of the claim of M. D. Ball to a seat in this House as a Delegate from the Territory of Alaska.

Mr. J. Proctor Knott, of Kentucky, made the point of order that the said report and subject was not a question of privilege, there being no law authorizing Alaska to send a Delegate to Congress or authorizing an election for that purpose to be held in said Territory.

After debate on the point of order, the Speaker² sustained the same, on the ground that said report, with an accompanying resolution, providing that M. D. Ball be not admitted to a seat in the Forty-seventh Congress as a Delegate from the Territory of Alaska until the Committee on the Territories shall report thereon, was referred to the Committee on the Territories, which committee had not reported thereon.

At the second session of this Congress an attempt was made, on February 19, 1883,³ to set a time for considering this report and also the bill and reports of the Committee on Territories, but it failed. The matter ended thus.

412. The election case of Owen G. Chase, claiming a seat as Delegate from the Territory of Cimmaron, in the Fiftieth Congress.

The House declined to admit a Delegate from a Territory not organized by law.

On December 12, 1887,⁴ Mr. William M. Springer, of Illinois, presented the petition of Owen G. Chase, claiming to be elected a Delegate from the Territory of Cimmaron, and also a resolution referring the petition and certificate of election to the Committee on Territories and allowing Mr. Chase the privileges of the floor pending the consideration of the organization of a Territorial government.

Mr. Springer urged, in behalf of his resolution, the precedent of California. On the other hand, it was urged that the more recent action of the House in the case of the proposed Delegate from Alaska was the better precedent.

On motion of Mr. S. S. Cox, of New York, the resolution and petition were laid on the table, ayes 157, noes 53.

¹ First session Forty-seventh Congress, Journal, pp. 923, 924; Record, pp. 2343–2345.

² J. Warren Keifer, of Ohio, Speaker.

³ Second session Forty-seventh Congress, Journal, p. 444; Record, p. 2954.

⁴ First session Fiftieth Congress, Journal, p. 42; Record, pp. 38–40.