

Chapter LXI.

OBJECTIONS AT THE ELECTORAL COUNT.

1. Questions as to the votes of Georgia and Louisiana in 1869. Sections 1964, 1966.
 2. Questions as to the votes of Georgia, Louisiana, and Arkansas in 1873. Sections 1967-1970.
 3. Questions settled by the Electoral Commission in 1877. Sections 1971-1980.
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1964. In the electoral count of 1869 objection was made that there had been no valid election in Louisiana, but the vote was counted.—On February 10, 1869,¹ during the count of the electoral vote, Mr. James Mullins, of Tennessee, offered this objection:

I object to any count of the votes certified from the State of Louisiana, and raise the question in regard to them that no valid election of electors for President and Vice-President of the United States has been held in said State.

The two Houses separated, and after considering the objection and acting, returned into joint convention, when the President pro tempore announced that the two Houses, by concurrent action, had decided that the vote of Louisiana should be counted.

1965. In 1869 the electoral vote of Georgia was announced in an alternative way, the objections to it being several in number.—On February 10, 1869,² during the count of the electoral vote, Mr. Benjamin F. Butler, of Massachusetts, offered this objection:

I object, under the joint rule, that the vote of the State of Georgia for President and Vice-President ought not to be counted, and object to the counting thereof because, among other things, the vote of the electors in the Electoral College was not given on the first Wednesday of December, as required by law, and no excuse or justification for the omission of such legal duty is set forth in the certificate of the action of the electors.

Secondly, because at the date of the election of said electors the State of Georgia had not been admitted to representation as a State in Congress since the rebellion of her people, or become entitled thereto.

Thirdly, that at said date said State of Georgia had not fulfilled in due form all the requirements of the Constitution and laws of the United States, known as the reconstruction acts, so as to entitle said State of Georgia to be represented as a State in the Union in the electoral vote of the several States in the choice of President and Vice-President.

Fourthly, that the election pretended to have been held in the State of Georgia on the first Tuesday of November last past was not a free, just, equal, and fair election; but the people of the State were deprived of their just rights therein by force and fraud.

¹Third session Fortieth Congress, Journal, pp. 314, 315; Globe, pp. 1056, 1057.

²Third session Fortieth Congress, Journal, p. 315; Globe, pp. 1050-1055, 1058, 1059, 1062.

The two Houses having separated, the House decided, yeas 41, nays 150, against counting the vote of Georgia.

The Senate decided that under the concurrent resolution governing the count, the objections should be overruled, and the whole vote should be stated as it would be, both with and without Georgia.¹

1966. In 1873 there was objection to the electoral vote of Mississippi because of alleged informalities and deficiencies in the certificate, but the vote was counted.—On February 12, 1873,² during the session of the joint convention for the counting of the electoral vote, the State of Mississippi was reached, and Mr. Lyman Trumbull, of Illinois, a Senator, submitted this objection:

Mr. Trumbull objects to counting the votes cast for President and Vice-President by the electors in the State of Mississippi, for the reason it does not appear from the certificate of said electors that they voted by ballot.

Mr. Clarkson N. Potter, of New York, a Representative, also filed objections as follows:

Mr. Potter objects to one vote of the State of Mississippi, because the certificate declaring that J. J. Spellman was appointed an elector in the stead of A. T. Morgan, absent, by the electoral college of that State, in accordance with the laws of that State, is not signed by the governor of that State.

And further that the certificate of the secretary of state read does not certify anything of his own knowledge, but only states he has been so notified as he certifies.

The Senate having retired, Mr. Henry L. Dawes, of Massachusetts, submitted in the House the following resolution, which was agreed to by a vote of 101 ayes to 33 noes:

Resolved, That in the judgment of this House the eight votes reported by the tellers as cast by electors in and for the State of Mississippi ought to be counted as reported by them.

Mr. Potter then submitted a resolution providing that the vote cast by James J. Spellman be rejected, and that only 7 votes be counted for Mississippi. For that resolution Mr. Nathaniel P. Banks, of Massachusetts, offered the following substitute, which was agreed to, ayes 109, noes 33.

Resolved, That the electors of the State of Mississippi, having been appointed in the manner directed by the legislature of that State, and in accordance with the provisions of the Constitution of the United States, were legally elected, and that the vote of the State as cast by them should be counted, and that the certificate of the governor of that State of the electoral vote cast, and the certificate of the secretary of state of that State in regard to the choice of electors is in compliance with the Constitution and laws of the United States.

This resolution was agreed to by the House.

In the Senate,³ after consideration, the Senate agreed to the following resolutions:

Resolved, That the electoral vote of the State of Mississippi be counted.

Resolved, That the vote cast by James J. Spellman, one of the electors for the State of Mississippi, be counted.

The joint convention having reassembled, the votes of Mississippi were counted under the joint rule, the two Houses concurring.⁴

¹ See section 1949 of this volume for explanation of this proceeding.

² Third session Forty-second Congress, Journal, pp. 376, 377; Globe, pp. 1297–1299.

³ Globe, pp. 1287, 1288.

⁴ Globe, p. 1299.

1967. In 1873 objection was made that the electoral vote of Georgia should not be counted, as it had been cast for Horace Greeley, who was dead; and the two Houses not agreeing, the vote was not counted.—On February 12, 1873,¹ during the session of the joint convention for the counting of the electoral vote, the State of Georgia was reached, and Mr. George F. Hoar, of Massachusetts, a Representative, filed the following objection:

Mr. Hoar objects, the votes reported by the tellers as having been cast by the electors of the State of Georgia for Horace Greeley, of New York, can not legally be counted, because said Horace Greeley, for whom they appear to have been cast, was dead at the time said electors assembled to cast their votes and was not a person within the meaning of the Constitution, this being a historical fact of which the two Houses may take notice.

The Senate having withdrawn, the House, without debate,² and by a vote of 102 yeas to 98 nays, agreed to this resolution:

Resolved, That the votes reported by the tellers as having been cast by the electors of the State of Georgia for Horace Greeley, of New York, for President of the United States, ought not to be counted, the said Horace Greeley having died before said votes were cast.³

In the Senate Mr. George F. Edmunds, of Vermont, offered this resolution:

Resolved, That the electoral votes of Georgia cast for Horace Greeley be not counted.

On motion of Mr. Allen G. Thurman, of Ohio, the word “not” was stricken out, yeas 47, nays 18. Then the resolution as amended was agreed to, yeas 44, nays 19.⁴

The joint convention having assembled, the President of the Senate announced that as there was a nonconcurrence of the two Houses as to the votes in question, they could not be counted under the joint rule.⁵

1968. In 1873 the electoral vote of Louisiana was rejected, objections having been made because of conflicting certificates, and on other grounds.—On February 12, 1873,⁶ during the session of the joint convention for the counting of the electoral vote, various objections were made to counting the electoral votes of the State of Louisiana. The Vice-President, in presenting the returns, stated that from Louisiana there had been received two returns sent by mail and two by messenger, each of the last having been received by the Secretary of State in the absence of the Vice-President and the President of the Senate pro tempore from the seat of Government. The first return, made by L. C. Roudanez, was received on the 31st of December, within the time required by the Constitution. The second return was received on the 2d of January, being one day within the time required by the Constitution. What appeared to be the duplicates were received by mail on the 10th and 14th of December.

The Chair first submitted those returns which reached the office of the Secretary of State, in accordance with law, on December 31.

¹Third session Forty-second Congress, Journal, p. 376; Globe, p. 1297.

²Under the joint rule no debate was in order. The present law allows a limited debate.

³Journal, p. 376; Globe, p. 1297.

⁴Globe, pp. 1285–1287.

⁵Journal, p. 383; Globe, p. 1299.

⁶Third session Forty-second Congress, Journal, pp. 381, 383; Globe, pp. 1303–1305.

These papers consisted of: The certificate, under seal, of "George Bovee, secretary of state," that the returning officers had returned to him as secretary of state, according to law, the following persons as duly elected electors of President and Vice-President of the United States for the State of Louisiana [names given]; a certificate signed by the electors, certifying that they had voted by ballot for Ulysses S. Grant for President of the United States and for Henry Wilson, of Massachusetts, for Vice-President; copies of minutes of the proceedings of these electors at their various meetings.

The Chair then laid before the convention the papers received by messenger on January 2. These papers consisted of: A certificate, under seal, signed by H. C. Warmouth and attested as follows: "By the governor, Y. A. Woodward, assistant secretary of state," which certified that T. C. Manning, A. S. Herron, and others were duly and legally elected Presidential electors, etc., and that the signature of B. P. Blanchard, State registrar of voters for the State of Louisiana, was genuine; a certificate signed by the electors, Manning, Herron, and others, giving the record of their proceedings, and that they had cast 8 blank ballots for President of the United States and 8 votes for B. Gratz Brown, of Missouri, for Vice-President.

The certificates having been read, and objections having been called for, objections against the Grant and Wilson electors were presented as follows:

By Senator Matthew H. Carpenter, of Wisconsin, because there was no proper return of votes cast by the electors; because there was in that State no State government republican in form, and because no canvass or counting of the votes cast for electors at the November election had been made prior to the meeting of the electors.

By Representative Clarkson N. Potter, of New York, that there was no certificate from the executive authority of that State, as required by the act of Congress of 1792, certifying that the persons who cast such votes were appointed electors of said State, but that, on the contrary, the certificate of the governor showed that the persons appointed electors were not those voting for Grant and Wilson.

By Senator Lyman Trumbull, of Illinois, that the election of the electors was not certified by the proper officers; that Bovee was not secretary of state and not in possession of either the office or the seal, and that Bovee had admitted before the committee of the Senate that the certificate was untrue in fact.

To the votes cast by Manning, Herron, and others, objections were offered as follows:

By Senator J. Rodman West, of Louisiana, on the ground that the certificate was not made in pursuance of law.

By Representative Lionel A. Sheldon, of Louisiana, on the ground that the certificate of the governor was not signed by the person who was at that time assistant secretary of state of Louisiana; that at the time the certificate was executed there had not been made any count, canvass, or return of the votes cast by the people of Louisiana for electors by any lawful authority, and that the testimony taken before the Senate committee showed that the certificate was made by the governor without any authentic knowledge of the result of the election by the people of the State.

Objections were also made to counting any of the votes from the State:

By Mr. Job E. Stevenson, of Ohio, on the ground that it did not appear sufficiently that the electors were elected according to law.

By Senator Arthur I. Boneman, of West Virginia, for the reasons set forth in the report of the Senate No. 417, Third session Forty-second Congress.

The Senate having withdrawn, the House proceeded to consider the objections, and Mr. James A. Garfield, of Ohio, offered this resolution:

Resolved, That, in the judgment of this House, none of the returns reported by the tellers as electoral votes of the State of Louisiana should be counted.

To this was offered an amendment that the, votes certified by the secretary of state should be counted; and the amendment was not agreed to. Then another amendment providing for counting the votes certified by "H. C. Warmouth, governor," was negatived, yeas 59, nays 85.

The original resolution was then agreed to.

In the Senate ¹ Mr. Matthew H. Carpenter, of Wisconsin, offered this resolution, which was agreed to, yeas 33, nays 16:

Resolved, That, all objections presented having been considered, no electoral vote purporting to be that of the State of Louisiana be counted.

The joint convention having reassembled, and the two Houses concurring in so ordering, the vote of Louisiana was not counted.

1969. In 1873 objection was made both to the substance and form of the electoral certificate of Arkansas; and, the two Houses disagreeing, the vote was not counted.—On February 12, 1873,² during the session of the joint convention for the counting of the electoral vote, Mr. Benjamin F. Rice, of Arkansas, a Senator, offered the following objection:

Mr. Rice objects to counting the vote of the State of Arkansas because the official returns of the election in said State, made according to the laws of said State, show that the persons certified to by the secretary of state as elected were not elected as electors for President and Vice-President at the election held November 5, 1872; second, because the returns read by the tellers are not certified according to law.

In presenting the vote of Arkansas the Vice-President had stated that the electoral vote of Arkansas was received by him by mail on December 11, 1872, and by messenger at the Department of State, and in the absence of the Vice-President by the President pro tempore of the Senate on December 28, 1872. On the 4th or 5th day of February a person claiming to be a messenger commissioned to bring the electoral votes of the State of Arkansas presented himself at the Vice-President's room with a paper not in the form of law, but addressed to him as President of the Senate. The Vice-President stated that he opened the paper, as it was addressed to him, but declined to receive it even informally. The papers received on the 11th and 28th of December were those now presented to the convention.

The Senate having withdrawn, and the House having proceeded to the con-

¹ Globe, pp. 1292, 1293.

² Third session Forty-second Congress, Journal, pp. 379–384; Globe, pp. 1301–1305.

sideration of the objections, Mr. Stephen W. Kellogg, of Connecticut, offered the following resolution, which was agreed to, yeas 103, nays 26:

Resolved, That the electoral vote of Arkansas be counted.

In the Senate Mr. Oliver P. Morton, of Indiana, offered this resolution:

Resolved, That the electoral vote of Arkansas should be counted.

The papers having been read, it was developed that there was a statement of the vote signed by the electors and a certificate of the secretary of state as to who were electors. But there was no certificate from the governor, and there was doubt about the seal attached being the great seal of the State.

Mr. George F. Edmunds, of Vermont, moved to amend the resolution so as to read:

Resolved, That the electoral vote of Arkansas should not be counted.

The amendment was agreed to, yeas 28, nays 25, and then the resolution in the amended form was agreed to, yeas 28, nays 24.

The joint convention having reassembled, and the nonconcurrence of the two Houses having been reported, the vote of Arkansas was not counted, under the terms of the joint rule.

1970. In 1873 objections were made to the electoral vote of Texas on the ground of a defective certificate and because less than an assumed quorum of the electors had acted; but the vote was counted.—On February 12, 1873,¹ during the session of the joint convention for counting the electoral vote, the State of Texas was reached, and Mr. Lyman Trumbull, of Illinois, a Senator, offered the following objection:

Mr. Trumbull objects to the vote of Texas because there is no certificate by the executive authority of that State that the persons who voted for President and Vice-President were appointed as electors of that State, as required by the act of Congress.

Mr. Oliver J. Dickey, of Pennsylvania, a Representative, offered also the further objection:

Mr. Dickey objected to the counting of the electoral vote of the State of Texas because four electors, less than a majority of those elected, undertook to fill the places of other four electors who had been elected and were absent.

The Senate having withdrawn, the House considered the first objection, and on motion of Mr. Henry L. Dawes, of Massachusetts, agreed to this resolution:

Resolved, That in the judgment of this House the vote of Texas should be counted as reported by the letters.

As to the second objection, Mr. Dickey offered a resolution that the votes of Texas should not be counted, for the reasons set forth in his objection. On motion of Mr. Nathaniel P. Banks, of Massachusetts, the resolution was amended and adopted in this form:

Resolved, That a quorum is an arbitrary number, which each State has the right to establish for itself, and as it does not appear that the choice of electors was in conflict with the law of Texas as to a quorum for the transaction of business, the vote of the electors for President and Vice-President be counted.

¹Third session Forty-second Congress, Journal, pp. 378, 379 Globe, pp. 1300, 1301.

The Senate, after consideration,¹ agreed to this resolution:

Resolved, That the electoral vote of the State of Texas be counted, notwithstanding the objection raised by Mr. Trumbull.

Resolved, That the objection raised by Mr. Dickey to counting the electoral vote of the State of Texas be, and the same is, overruled.

So, the two Houses having concurred, the vote of Texas was counted under the joint rule.²

1971. Conflicting electoral certificates being presented from Florida in 1877, a decision was reached that the regularly signed certificate from the governor acting at the time the votes were cast should stand.

The allegation that a Florida elector was disqualified was disregarded by the Electoral Commission in 1877, in the absence of proof.

On February 1, 1877,³ during the session of the joint convention of the two Houses for counting the electoral vote, the certificates from the State of Florida were opened by the Presiding Officer, and it appearing that more than one paper purporting to be a certificate of electoral votes cast for President and Vice-President in the said State had been received by the President of the Senate, all of the certificates were handed to the tellers and were read.

Thereupon Mr. David Dudley Field, of New York, a Representative, presented objections in writing, duly signed, to the paper purporting to be a certificate of M. L. Stearns, as governor, that Charles H. Pearce, Frederick C. Humphries, William H. Holden, and Thomas W. Long were appointed electors, to the paper purporting to be a list of the votes cast by said electors for President and Vice-President, to the votes themselves, and to the counting of the votes. The reasons were (1.) that the electors were not appointed as the legislature directed, or in any matter whatever; (2) that Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock were appointed as the legislature directed; (3) the manner of appointing the electors was by the votes of the qualified electors, which gave to Messrs. Call, Yonge, Hilton, and Bullock an irrevocable title, which could not be set aside by any other person; (4) that the pretended certificate signed by M. L. Stearns, as governor, was untrue and obtained by fraud and conspiracy, and (5) was made out and executed in pursuance of the same fraudulent conspiracy; (6) that the Stearns certificate and lists, if they ever had any validity, were annulled by a subsequent lawful certificate of the governor of Florida (successor to Governor Stearns) by act of the legislature declaring the title of Messrs. Call, Yonge, Hilton, and Bullock valid, and by judgment of the circuit court of Florida which, in *quo warranto* proceedings, had, before the electors had cast their votes, decided that Messrs. Call, Yonge, Hilton, and Bullock were the lawful electors. The objections further alleged that the four electors last named constitutionally, on December 6, 1876, cast their votes for Tilden and Hendricks, and certified these votes to the President of the Senate; and also did everything required by Constitution and laws toward authentication of such votes, except section 136, Revised Statutes. And in conformity with the judgment of the Florida court the

¹ Globe, pp. 1289–1291.

² Globe, p. 1301.

³ Second session Forty-fourth Congress, Journal, pp. 354, 357; Record, pp. 1195–1197.

governor of Florida, who had been inducted into office subsequent to December 6, 1876, did, on January 26, 1877, give to the last-named electors the duplicate lists prescribed by section 136, Revised Statutes, which they forwarded as a supplement to their former certificate in that behalf.

A further objection, filed by Mr. Charles W. Jones, a Senator from Florida, alleged that Mr. Humphreys was disqualified because he held the office of United States shipping commissioner at Pensacola at the time of his alleged election as an elector and at the time of his casting of his vote as such elector and therefore could not be constitutionally appointed an elector.

On the other hand, objections were filed to the Call, Yonge, etc., certificates and papers by Mr. Aaron A. Sargent, of California, a Senator, on the grounds that they were not authenticated properly according to the Constitution and laws and therefore were not entitled to be received or read; that they were not accompanied by the certificate of the executive authority of the State, or by any valid or lawful certification, and that the properly authenticated certificate and papers showed that Messrs. Humphreys, Pearce, Holden, and Long were duly appointed electors and duly cast, certified, and transmitted their votes as such to the President of the Senate. A further objection was filed by Mr. John A. Kasson, of Iowa, a Representative, alleging (1) that the Call certificate was not legally certified, the certificate being by an officer not holding the office of governor or any other office in said State with authority in the premises either at the time when the electors were appointed or when their functions were exercised; (2) because the proceedings certifying the Call electors were *ex post facto*, and (3) retroactive.

The certificates and objections were referred to the electoral commission under the law,¹ and on February 10² its report was laid before the convention.

The decision of the Commission was that the votes certified by M. L. Stearns, governor, were the votes provided for by the Constitution, were lawfully to be counted, as therein certified, for Hayes and Wheeler, and that Messrs. Humphreys, Pearce, Holden, and Long were duly appointed electors. The report further says:

That it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence aliunde the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Florida on and according to the determination and declaration of their appointment by the board of State canvassers of said State, prior to the time required for the performance of their duties, had been appointed electors, or by counter proof to show that they had not, and that all proceedings of the courts or acts of the legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

As to the objection made to the eligibility of Mr. Humphreys, the Commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of shipping commissioner on the day when the electors were appointed.

As a consequence of this the Commission decided that the other certificates and papers should not be counted.

The report was signed by the eight Commissioners concurring. The seven non-concurring filed no minority views.

¹ 19 Stat. L., p. 229.

² Journal, pp. 417, 418; Record, p. 1481.

Mr. David Dudley Field, of New York, presented objections to the report on the ground that the Commissioners had made a wrong report, had refused to receive competent and material evidence in support of the allegation that the four electors headed by the name of Mr. Humphreys had been appointed fraudulently, had refused to recognize the action of the courts or other departments of government of the State of Florida tending to show that the Stearns certificates were fraudulent, and finally had violated the Constitution of the United States in counting the said certificates.

The two Houses separated to consider the objections, and having met again, on February 12,¹ it was announced that the Senate had sustained the decision of the Commission and the House had not. Therefore the presiding officer announced that, under the law, the two Houses not concurring in ordering otherwise, the decision of the Commission would stand unreversed.²

1972. In dealing with objections to the electoral vote of Louisiana in 1877, the Electoral Commission followed the rule laid down in the case of Florida.

It was held not to be competent to go behind the official certificates and papers to prove the alleged disqualifications of certain Louisiana members of the Electoral College of 1877.

On February 12, 1877,³ during the joint convention of the two Houses for counting the electoral vote, the certificates of the State of Louisiana were opened by the presiding officer and it appeared that more than one paper purporting to be a certificate of the electoral votes had been received. All the papers having been read by the tellers, Mr. Joseph E. McDonald, of Indiana, a Senator, presented objections in writing to the certificate of electors and votes certified by William P. Kellogg, "claiming to be, but who was not, the lawful governor," for the reasons that (1) on November 7, 1876, there was no law of Louisiana directing the manner of appointment of electors; (2) if any law did exist it was an act of the legislature directing that electors should be appointed in their primary capacity, and the people of the State, in accordance with the legislative direction, did, on November 7, 1876, choose the electors certified by John McEnery, "who was then the rightful and lawful governor;" (3) the Kellogg electors were not duly appointed according to the laws and constitution of Louisiana and the United States, and that the lists of names certified by said Kellogg were false in fact and fraudulently made; (4) the pretended canvass of the returns of the election by J. Madison Wells and others as returning officers of said election was without jurisdiction and void because of invalidity of the statutes under which they claimed to act, because, if the statutes were valid, the board was improperly constituted, and because the board acted improperly and fraudulently in making the canvass and return; (5) A. B. Levissee, one of the electors, was, at the time of his appointment, disqualified by reason of holding the office of commissioner of the United States circuit court; (6) O. H.

¹ Journal, pp. 421-425; Record, p. 1503.

² The proceedings of the Commission in the Florida case are included in pages 1 to 57 of volume 24 of Congressional Record, second session Forty-fourth Congress. The pages relating to the qualification of Mr. Humphreys are 10, 31, 37-43, 53.

³ Second session Forty-fourth Congress, Journal, pp. 425-429; Record, pp. 1504-1505.

Brewster was similarly disqualified by holding the office of surveyor-general of the United States Land Office; (7) by reason of these disqualifications the Kellogg certificate was void as to these two and their votes should not be counted; and the vote of William P. Kellogg as one of the electors should not be counted because his certificate, "executed by himself as governor" to "himself as elector," was void, and also because under the constitution of Louisiana he was not entitled to hold both offices; and (8) the Kellogg certificates were fraudulently issued in pursuance of a conspiracy to pervert the will of the people of Louisiana.

Mr. Randall L. Gibson, of Louisiana, a Representative, offered further objections, that (1) the government of Louisiana as administered at and prior to November 7, 1876, was not Republican in form; (2) there was no canvass of votes made on which the Kellogg certificates were issued; (3) any alleged canvass was an act of usurpation, fraudulent and void; (4) the votes of Messrs. Kellogg, Burch, Marks, and Jeffrion were invalid, because the said alleged electors, on November 7, 1876, held other State offices—of governor, senator, district attorney, and supervisor of registration, respectively—although the constitution of Louisiana prohibited such holding of plural offices; (5) and the said Jeffrion, by reason of being supervisor of registration, was disqualified by statute of Louisiana from being eligible for election to any office at that time when he officiated as such supervisor.

Mr. Fernando Wood, of New York, a Representative, filed an objection that the Kellogg electors were not appointed in the manner directed by the legislature of Louisiana.

Mr. Timothy O. Howe, of Wisconsin, a Senator, filed objection to the certificate of electors certified by John McEnery, as governor of Louisiana, for the reason that there was no evidence that said McEnery was at any time during 1876 governor, while conclusive evidence showed that William P. Kellogg was during that time recognized as governor by the judicial and legislative departments of the State and by every department of the United States Government; and objection was also made to the counting of the votes of John McEnery or R. C. Wickliffe for the reason that there was no evidence that either had been appointed as elector as directed by the legislature, but that there was evidence to the contrary.

On February 19, 1877,¹ the report of the Commission was laid before the joint convention of the two Houses. It was signed by the eight concurring Commissioners, and no minority views were filed by the seven nonconcurring. The report declares the decision of the Commission that the votes of the Kellogg electors were the votes provided for by the Constitution and were lawfully to be counted for Hayes and Wheeler; that the above-mentioned electors appeared to have been lawfully appointed and that they voted in the time and manner provided by the Constitution of the United States and the law. The report continues:

And the Commission has by a majority of votes decided, and does hereby decide, that it is not competent under the Constitution and the law as it existed at the date of the passage of said act to go into evidence *aliunde* the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Louisiana on and according to the determination and declaration of their appointment by the returning officers for elections in the said State prior to the time required for the performance of their duties had been

¹ Journal, p. 469; Record, pp. 1666–1670.

appointed electors, or by counter proof to show that they had not; or that the determination of the said returning officers was not in accordance with the truth and the fact; the Commission by a majority of votes being of opinion that it is not within the jurisdiction of the two Houses of Congress assembled to count the votes for President and Vice-President to enter upon a trial of such questions.

The Commission by a majority of votes is also of opinion that it is not competent to prove that any of said persons so appointed as electors aforesaid held an office of trust or profit under the United States at the time when they were appointed, or that they were ineligible under the laws of the State, or any other matter offered to be produced aliunde the said certificates and papers.

The Commission is also of opinion by a majority of votes that the returning officers of elections who canvassed the votes at the election for electors in Louisiana were a legally constituted body, by virtue of a constitutional law, and that a vacancy in said body did not vitiate its proceedings.

The Presiding Officer having asked for objections to this decision, Mr. Randall L. Gibson, of Louisiana, submitted objections¹ to the action taken by the Commission in excluding evidence offered in support of the original objections to the counting of the votes of the Kellogg electors. Objections of a similar tenor were also offered by Mr. William A. Wallace, of Pennsylvania, a Senator, and Mr. Alexander G. Cochrane, of Pennsylvania, a Representative.

The two Houses separated to consider and determine the objections to the report of the Commission; and the two Houses not concurring, the Presiding Officer announced that the decision of the Electoral Commission would stand unreversed, when the joint convention reassembled on February 20.² The decision of the House was that the votes of the Kellogg electors be not counted.

1973. In 1877 an objection was made to one elector of Michigan on the ground that he had been improperly chosen in place of an elector alleged to be disqualified; but the two Houses decided to count the vote.—On February 20, 1877,³ during the session of the joint convention of the two Houses for the counting of the electoral vote, the certificate from the State of Michigan was opened and read, and the presiding officer, having asked for objection thereto, Mr. J. Randolph Tucker, of Virginia, a Representative, filed objections to the vote of Daniel L. Crossman as an elector on the ground that: (1) A certain Benton Hanchett was voted for and certified to have been elected and appointed an elector of Michigan, and that on November 7, 1876, the day of the Presidential election, was and for a long period prior thereto had been, and up to and after December 6, 1876, when the electors voted according to law, continued to be a United States commissioner, and therefore could not be appointed an elector under the Constitution of the United States; (2) that the laws of Michigan give power to fill vacancies occasioned only “by death, refusal to act, neglect to attend,” and therefore that the choice of Crossman in place of Hanchett was not legal. Evidence accompanying the objections showed that Mr. Hanchett neglected to attend the meeting of the electors, because of his disqualification.

There being no further objections to the vote of Michigan, the Senate withdrew in order that the two Houses might consider the objections separately.

¹Journal, pp. 470–482; Record, pp. 1671–1675.

²Journal, p. 489. For proceedings of the Electoral Commission on this case see Record, second session, Forty-fourth Congress, vol. 24, pp. 57–119.

³Second session Forty-fourth Congress, Journal, pp. 489–491.

On the same day¹ the House considered the objections; and Mr. Tucker submitted the following resolution:

Resolved by the House of Representatives, That Daniel L. Crossman was not appointed an elector by the State of Michigan as its legislature directed, and that the vote of said Daniel L. Crossman as an elector of said State be not counted.

After debate Mr. George A. Jenks, of Pennsylvania, offered the following substitute, which was agreed to:

Whereas, the fact being established that it is about twelve years since the alleged ineligible elector exercised any of the functions of a United States Commissioner, it is not sufficiently proven that at the time of his appointment he was an officer of the United States; therefore,

Resolved, That the vote objected to be counted.

When the two Houses reassembled in joint convention, the Secretary read the determination of the Senate:

Resolved, That the objection made to the vote of Daniel L. Crossman, one of the electors of Michigan is not good in law and is not sustained by any lawful evidence.

Resolved, That said vote be counted with the other votes of the electors of said States, notwithstanding the objections made thereto.

The determination of the House having been read, the Presiding Officer announced that, the two Houses not concurring in ordering otherwise, the full electoral vote of Michigan would be cast for Hayes and Wheeler.²

1974. In 1877 an elector of Nevada was objected to as disqualified, but because of an error in the objection it was not pressed, and the vote was counted.—On February 20, 1877,³ the certificates from the State of Nevada were opened in the joint convention for counting the electoral vote, and objections having been called for, Mr. William M. Springer, of Illinois, filed objections to the vote of R. M. Daggett, an elector, on the ground that on the 7th of November, 1876, and for a long period prior thereto, as well as after that date, the said Daggett was a United States commissioner and, therefore, might not under the Constitution of the United States be appointed an elector. As a part of the objection was filed evidence tending to show that Daggett was clerk of the district and circuit courts of Nevada, and not a commissioner. He had resigned by telegraph just preceding election.

The two Houses having separated to consider the objections, on February 21⁴ in the House, Mr. Springer announced that there was an error in the objection in stating the office held by the elector. Therefore, as the Senate had acted on the objection, and as the House could not amend it, he offered this resolution:

Resolved, That the vote of R. M. Daggett, one of the electors of the State of Nevada, be counted, the objections to the contrary notwithstanding.

The joint convention having reassembled,⁵ and the action of the Senate having been reported in identical terms with that of the House, the presiding officer announced that the full vote of Nevada would be counted for Hayes and Wheeler.⁶

¹Journal, pp. 492, 493; Record, pp. 1705–1716.

²These proceedings took place according to the provision of law. 19 Stat. L., p. 229.

³Second session Forty-fourth Congress, Journal, pp. 495–500; Record, p. 1720.

⁴Journal, p. 502; Record, pp. 1726–1728.

⁵Journal, p. 502; Record, p. 1728.

⁶The action of the convention was under the terms of a law. 19 Stat. L., p. 229.

1975. There being conflicting electoral certificates from Oregon in 1877, the Electoral Commission decided in favor of the electors whom the Secretary of State legally certified as having the highest number of votes, although the governor had issued a certificate to others.

An elector disqualified by reason of holding another office, resigned both offices, whereupon he was made eligible to fill the vacancy thus caused among the electors.

On February 21, 1877,¹ during the session of the two Houses in joint convention for the counting of the electoral vote, the certificates from the State of Oregon were presented. From these certificates and accompanying papers the following facts appeared:

That at the election on November 7, 1876, J. C. Cartwright, W. H. Odell, and J. W. Watts had received, respectively, 15,214 and 15,206 and 15,206 votes as electors, and that E. A. Cronin received 14,157 votes, W. B. Laswell 14,149 votes, and Henry Kippel 14,136 votes.

That J. W. Watts, by reason of being postmaster at the time of his election, did on the day of the assembling of the electors to cast their votes, December 6, 1876, resign as an elector, and was by the votes of the other electors chosen to fill the vacancy caused by his own resignation. It also appears by other testimony² that said Watts had, previous to December 6, 1876, resigned as postmaster.

That both the governor and secretary of state of Oregon refused, upon demand, to deliver to said Cartwright, Odell, and Watts certified lists of electors, but that he did deliver such lists to E. A. Cronin.

That the governor delivered a duly executed certificate of the election of Odell, Cartwright, and Cronin, giving the votes for each, which, he certified, were "the highest number cast at said election for persons eligible." That is, he had declined a certificate to Watts on account of his alleged disqualification, and had certified the opponent having the highest number of votes, namely, Cronin.

That when the electors met Cartwright and Odell refused to act with Cronin, whereupon the latter appointed J. N. T. Miller and John Parker to fill the vacancies.

That Odell, Cartwright, and Watts certified their votes for Hayes and Wheeler, accompanying it by a tabulated vote of the vote of Oregon for electors, certified by the secretary of state.

That Cronin, Miller, and Parker certified that they cast two votes for Hayes and Wheeler and one vote for Tilden and Hendricks, and their certificate accompanied the duly executed certificate of the governor, setting forth that Odell, Cartwright, and Cronin had been elected.

The certificates having been read by the tellers, and objections having been called for, Mr. John H. Mitchell, of Oregon, a Senator, offered objections that: (1) Neither Cronin, Miller, nor Parker were appointed electors in the manner directed by the legislature of Oregon or in any other manner; (2) Odell, Cartwright, and Watts were duly and legally appointed electors, as appeared from the certificates; (3) it did not appear from the face of the governor's certificate that it was issued to the three persons having the highest number of votes, and duly and legally chosen, but was issued by the governor to the persons deemed eligible, although one of such persons was not appointed according to the laws of the State; (4) it appeared from the certificate of the secretary of state, attached to and made a part of the returns of Odell, Cartwright, and Watts, that these received the highest number of votes, and the same also appeared from the official declaration of the secretary of state on December 4, following the election, and, therefore, the certificate of the governor in certifying Cronin, instead of Watts, failed to conform to the laws of Congress and of Oregon;

¹Second session Forty-fourth Congress, Journal, p. 503; Record, pp. 1729-1731.

²Record, vol. 24, pp. 167, 168.

(5) Odell and Cartwright, a majority of the electoral college and duly appointed, filled the vacancy, as shown by the record, by the election of Watts.

Mr. William Lawrence, of Ohio, a Representative, filed further objections, that: (1) Messrs. Cronin, Miller, and Parker, or any one of them, were not appointed electors; (2) Odell, Cartwright, and Watts were duly appointed, cast their votes legally for Hayes and Wheeler, and their certificates were the only true and lawful lists; (3) these latter received the highest number of votes cast in Oregon for electors, and such fact was duly canvassed and certified by the secretary of state.

Mr. James K. Kelly, of Oregon, a Senator, filed objections to the Odell, Cartwright, and Watts certificates for reason that: (1) No certificate of the governor was annexed as required by sections 136 and 138, Revised Statutes; (2) they had not annexed to them a list of names of the said persons as electors with the seal of Oregon affixed by the secretary of state and signed by the governor and secretary as required by section 60, chapter 14, title 9, of the general laws of Oregon; (3) Watts was ineligible as an elector because he was a postmaster on the date of the election, November 7, 1876; (4) when the governor caused the lists of names of electors to be certified the name of Watts was not included; (5) it was the right and duty of the governor to certify as he did "the three persons capable of being appointed Presidential electors who received the highest number of votes; (6) Cartwright and Odell had no right to appoint Watts an elector on December 6, 1876, as there was no vacancy on that date; and (7) as they did not compose any part of the electoral college of Oregon as on that day constituted; and also (8) because Watts was still a postmaster.

On February 24, 1877,¹ the Presiding Officer laid before the joint convention the report of the Electoral Commission signed by the eight concurring Commissioners. They found that the votes of Odell, Cartwright, and Watts were those provided for by the Constitution of the United States, and as therein certified were to be counted for Hayes and Wheeler; and that the three persons above named were duly appointed electors in Oregon. The report continues:

The brief ground of this decision is that it appears, upon such evidence as by the Constitution and the law named in said act of Congress is competent and pertinent to the consideration of the subject, that the before-mentioned electors appear to have been lawfully appointed such electors of President and Vice-President of the United States for the term beginning March 4, A. D. 1877, of the State of Oregon, and that they voted as such at the time and in the manner provided for by the Constitution of the United States and the law.

And we are further of opinion that by the laws of the State of Oregon the duty of canvassing the returns of all the votes given at an election for electors of President and Vice-President was imposed upon the secretary of state and upon no one else; that the secretary of state did canvass the returns in the case before us and thereby ascertained that J. C. Cartwright, W. H. Odell, and J. W. Watts had a majority of all the votes given for electors and had the highest number of votes for that office, and by the express language of the statute those persons are deemed elected; that in obedience to his duty the secretary made a canvass and a tabulated statement of the votes, showing this result, which, according to law, he placed on file in his office on the 4th day of December, A. D. 1876. All this appears by an official certificate under the seal of the State and signed by him and delivered by him to the electors and forwarded by them to the President of the Senate with their vote.

¹Journal, pp. 527, 528; Record, p. 1887.

That the refusal or failure of the governor of Oregon to sign the certificate of the election of the persons so elected does not have the effect of defeating their appointment of such electors; that the act of the governor of Oregon in giving to E. A. Cronin a certificate of his election, though he received a thousand votes less than Watts, on the ground that the latter was ineligible was without authority of law and is therefore void.

That although the evidence shows that Watts was a postmaster at the time of his election, that fact is rendered immaterial by his resignation both as postmaster and elector and his subsequent appointment to fill the vacancy so made by the electoral college.

Mr. James K. Kelly, of Oregon, a Senator, having filed objections to this decision, the Senate withdrew to their Chamber that the two Houses might separately consider and determine the said objections.

The joint convention having reassembled,¹ the Presiding Officer announced that as the two Houses did not concur otherwise the decision would stand unreversed. The Senate had determined that the decision should stand and the House that the vote given by J. W. Watts should not be counted.²

1976. In 1877 an objection was made that one of the electors of Pennsylvania was illegally appointed; but the vote was counted.—On February 24, 1877,³ during the session of the joint convention for counting the electoral vote, the certificates from the State of Pennsylvania were read, when Mr. William S. Stenger, of that State, a Representative, submitted objections to the counting of the vote of Henry A. Boggs as an elector on the grounds that: (1) A certain Daniel J. Morrill was a candidate for elector and was declared by the governor to have been duly elected; (2) said Morrill was not duly elected because for a long time before, and on November 7, 1876, and for a long period subsequent thereto, he held the office of Centennial Commissioner under the act of March 3, 1871; (3) said Morrill could not be constitutionally appointed an elector; (4) he did not attend the meeting of the electors and had no right to attend; (5) the law of Pennsylvania provides in regard to filling vacancies: "If any such elector shall die, or from any cause fail to attend at the seat of government at the time appointed by law, the electors present shall proceed to choose viva voce a person to fill the vacancy occasioned thereby, and immediately after such choice the name of the person so chosen shall be transmitted by the presiding officer of the college to the governor, whose duty it shall be forthwith to cause notice in writing to be given to such person of his election, and the person so elected [and not the person in whose place he shall have been chosen] shall be an elector, and shall, with the other electors, perform the duties enjoined on them as aforesaid;" (6) the electors present had no authority to appoint the said Boggs, and such action was without authority of law, null and void; (7) and said Boggs was therefore not appointed in the manner directed by the legislature, and his vote as such elector could not constitutionally be counted.

With the objection, and as a part of it, certain testimony was filed.

On February 26,⁴ the House and Senate having separated to consider the objec-

¹ Journal, p. 533; Record, p. 1916.

² Journal, p. 531; Record, pp. 1907–1916. The effect of disagreement of the two Houses was provided by bylaw. (19 Stat, L., p. 229.) For proceedings of the Electoral Commission in this case see Congressional Record, second session Forty-fourth Congress, vol. 24, pp. 119–179.

³ Second session Forty-fourth Congress, Journal, pp. 533–538; Record, pp. 1917–1919.

⁴ Journal, pp. 540–544; Record, pp. 1919–1922, 1927–1938.

tions, they were considered in the House, and Mr. William D. Kelley, of Pennsylvania, submitted the following:

Resolved, That the vote of Henry A. Boggs be counted as an elector for the State of Pennsylvania, the objections to the contrary notwithstanding.

Mr. William S. Stenger, of Pennsylvania, submitted the following as a substitute therefor:

Resolved, That the vote of Henry A. Boggs as an elector for the State of Pennsylvania should not be counted, because the said Boggs was not appointed an elector for aid State in such manner as the legislature directed.

After debate the substitute was agreed to, yeas 135, nays 119, and the original resolution as amended by the substitute was then agreed to.

The same day¹ the joint convention reconvened, and the action of the Senate was reported as follows:

Resolved, That the vote of Henry A. Boggs be counted with the other votes of the electors of Pennsylvania, notwithstanding the objection thereto.

The action of the House having been reported, the Presiding Officer announced that as the two Houses did not concur in ordering otherwise, the full electoral vote of the State of Pennsylvania would be cast for Hayes and Wheeler.²

1977. In 1877 objection was made to one of the conflicting electoral certificates from South Carolina on the ground that the election was not legal for want of proper law, that there was no republican form of government in the State, etc.; but the certificate was admitted.

The Houses of Congress do not have, in counting the electoral vote, the power to inquire into the circumstances under which the primary vote for Presidential electors is given.

On February 26, 1877,³ during the joint convention for the counting of the electoral vote the certificates from the State of South Carolina were read. There were found to be two sets of certificates. Mr. Alexander G. Cochrane, of Pennsylvania, a Representative, submitted objections to the certificates of the electoral votes of C. C. Bowen, John Winsmith, T. B. Johnson, Timothy Hurley, W. B. Nash, Wilson Cook, and W. B. Meyers on the grounds that: (1) No legal election was held in the State, no registration law having been provided by the legislature, as required by the constitution of the State; (2) a republican form of government did not exist in the State on January 1, 1876, nor at any time thereafter up to and including December 10, 1876; (3) a legal and free election was prevented by the presence of soldiers of the United States near the polling places; (4) deputy marshals of the United States, acting under illegal instructions, prevented a fair election; (5) there was from January 1, 1876, to December 10, 1876, at no time a State government, except a pretended government set up in violation of law and the Constitution of the United States, and sustained by Federal troops.

These objections having been presented, Mr. John J. Patterson, of South Carolina, a Senator, submitted objections to the electoral votes cast by Theodore

¹ Journal, p. 546; Record, p. 1938.

² 19 Stat. L., p. 228.

³ Second session Forty-fourth Congress, Journal, pp. 550–552; Record, pp. 1945, 1946.

G. Barker, Samuel McGowan, John W. Harrington, John I. Ingram, William Wallace, John B. Erwin, and Robert Aldrich, on the grounds that: (1) They were not appointed electors; (2) the papers have not annexed to them a certificate of the governor of South Carolina as required by sections 136 and 138 of the Revised Statutes of the United States; (3) the papers have not annexed to them a list of the names of the said alleged electors, to which the seal of the State was affixed by the secretary of state, and signed by the governor and secretary as required by the State laws; (4) C. C. Bowen, John Winsmith, and their associates were appointed electors at the time and place prescribed by law, cast their votes for Hayes and Wheeler, and the lists of votes signed, certified, and transmitted by such electors are the only true and lawful lists of votes for President and Vice-President; (5) C. C. Bowen, John Winsmith, and their associates received the highest number of all the votes cast for electors on November 7, 1876; the proper State officers duly canvassed the votes, made and certified under seal and delivered to the said Bowen, Winsmith, etc., lists of the electors, showing that they had the highest number of votes and were elected; (6) the lists of votes cast by Bowen, Winsmith, and their associates have annexed the certificate of the governor of the State as required by sections 136 and 138 of the Revised Statutes of the United States; and (7) the said lists of votes have a list of the names of the said electors, to which the seal of the State of South Carolina was affixed by the secretary of state and signed by the governor and secretary as required by the laws of the State.

The certificates and objections were referred to the Electoral Commission, and the Senate withdrew.

On February 28, 1877,¹ the report of the Commission was received in the joint convention. It was signed by the eight concurring commissioners, and found that the votes of Bowen, Winsmith, and their associates, named in the certificate of D. H. Chamberlain, governor, were the votes provided for by the Constitution of the United States and were lawfully to be counted, as certified, for Hayes and Wheeler; and that the seven persons above named, Messrs. Bowen, Winsmith, and their associates, were duly appointed electors in and by the State of South Carolina. The report continues:

The brief ground of this decision is that it appears, upon such evidence as by the Constitution and the law named in said act of Congress is competent and pertinent to the consideration of the subject, that the before-mentioned electors appear to have been lawfully appointed such electors of President and Vice-President of the United States for the term beginning March 4, A. D. 1877, of the State of South Carolina, and that they voted as such at the time and in the manner provided for by the Constitution of the United States and the law.

And the Commission, as further ground for their decision, are of the opinion that the failure of the legislature to provide a system for the registration of persons entitled to vote does not render nugatory all elections held under laws otherwise sufficient, though it may be the duty of the legislature to enact such a law. If it were otherwise, all government in that State is a usurpation, its officers without authority, and the social compact in that State is at an end.

That this Commission must take notice that there is a government in South Carolina republican in form, since its constitution provides for such a government, and it is and was on the day of appointing electors so recognized by the Executive and by both branches of the legislative department of the Government of the United States.

¹Journal, pp. 570-573; Record, p. 2006.

That so far as this Commission can take notice of the presence of the soldiers of the United States in the State of South Carolina during the election, it appears that they were placed there by the President of the United States to suppress insurrection, at the request of the proper authorities of the State.

And we are also of the opinion that, from the papers before us, it appears that the governor and secretary of state have certified under the seal of the State that the electors whose vote we have decided to be the lawful electoral vote of the State were duly appointed electors, which certificate, both by presumption by law and by the certificate of the rival claimants of the electoral office, was based upon the action of the State canvassers. There exists no power in this Commission, and there exists none in the two Houses of Congress in counting the electoral vote, to inquire into the circumstances under which the primary vote for electors was given. The power of the Congress of the United States in its legislative capacity to inquire into the matters alleged, and to act upon the information so obtained, is a very different one from its power in the matter of counting the electoral vote. The votes to be counted are those presented by the State, and when ascertained and presented by the proper authorities of the State they must be counted.

The Presiding Officer having asked for objections to the decision, Mr. John F. Phillips, of Missouri, a Representative, presented objections, as did also Mr. Milton I. Southard, of Ohio, a Representative. The objections, besides restating some of the original objections to counting the vote, alleged that the Electoral Commission had neglected or refused to inquire into facts and allegations presented to it, and that certificate number 1 was void because of irregularity in the swearing of the electors, because it did not state that the electors voted by ballot, and because the certificate was not that required by the laws of the United States.

The Senate then withdrew, and the House and Senate proceeded to consideration of the objections to the report of the Commission. The Senate, after debate, decided that the decision of the Commission should stand as the judgment of the Senate, while the House decided that the objections to the decision be sustained by the House.

These decisions being reported in the joint convention,¹ the Presiding Officer, under the law,² announced that the two Houses not concurring otherwise, the decision of the Commission would stand unreversed.³

1978. Objection was made to the manner of appointment of one of the electors of Rhode Island in 1877, but the two Houses decided to count the vote.—On February 26, 1877⁴ during the session of the joint convention for the counting of the electoral vote, the certificates from the State of Rhode Island had been read, when Mr. William J. O'Brien, of Maryland, a Representative, presented objections to counting the vote of William S. Slater as an elector for the reasons that (1) the said Slater was not duly appointed an elector at the election on November 7, 1876; (2) George H. Corliss, according to the decision of the Electoral Commission rendered in the counting of the vote of John W. Watts, as elector of the State of Oregon, if said decision be law, was duly appointed elector by the State of Rhode Island, and the substitution for him of the said Slater was illegal and unconstitutional; (3) if in any event it was competent to complete the electoral college of Rhode Island by adding another elector thereto, it could only have been

¹ Journal p. 581; Record p. 2021.

² 19 Stat. L., p. 229.

³ For proceedings of the Electoral Commission see Congressional Record, second session forty-fourth Congress, vol. 24, pp. 179–193.

⁴ Second session Forty-fourth Congress, Journal p. 546; Record p. 1938.

done under the law as announced by the said Electoral Commission, and pursuant to the laws of said State by act of the majority of the members of said college, and not by the legislature of said State.

The Senate having withdrawn and the House having proceeded to the consideration of the objections, Mr. O'Brien offered this resolution:

Resolved, That the vote of William S. Slater, as elector for the State of Rhode Island should not be counted because said Slater was not appointed or elected elector for said State in such manner as its legislature had directed.

Mr. Benjamin T. Eames, of Rhode Island, offered as a substitute therefor the following:

Resolved, That the vote of William S. Slater as an elector for the State of Rhode Island be counted, the objections thereto to the contrary notwithstanding.

After debate, Mr. Eames's substitute was agreed to.

The two Houses having reassembled¹ in joint convention, and the action of the Senate, which was the same as that of the House, was reported; then the action of the House. The Presiding Officer then announced that the two Houses concurred in ordering the full electoral vote of the State of Rhode Island to be cast for Hayes and Wheeler.²

1979. In 1877 objection was made that a Wisconsin elector was disqualified by reason of holding another office; but the vote was counted.—On March 1, 1877,³ during the session of the joint convention for counting the electoral vote, the Presiding Officer opened the certificates from the State of Wisconsin, and the same having been read Mr. William P. Lynde, of Wisconsin, a Representative, presented objections upon the grounds that (1) Daniel L. Downs, who had voted as an elector, held the office of pension examining surgeon prior to November 7, 1876, the date of the Presidential election, and upon said day, and upon December 6, 1876, at the time he assumed to cast his vote as an elector. An abstract of testimony accompanied this objection.

The Senate withdrew, and the two Houses considered the objections separately. In the House Mr. Lynde offered this resolution:

Resolved, That the vote of Daniel L. Downs as an elector of the State of Wisconsin should not be counted, because he held an office of trust and profit under the United States, and therefore was not constitutionally appointed an elector by the said State of Wisconsin.

Mr. Lucien B. Caswell, of Wisconsin, offered the following as a substitute:

Resolved, That the vote of D. L. Downs be counted with the other votes of the electors of the State of Wisconsin, the objections thereto notwithstanding.

After debate, the substitute was rejected, yeas 778, nays 136. The original resolution of Mr. Lynde was then agreed to.⁴

The joint convention having reassembled,⁵ the action of the Senate was read in the form of a resolution declaring that the vote of Daniel L. Downs should be counted.

¹Journal, p. 550; Record, p. 1945.

²19 Stat. L., p. 229.

³Second session Forty-fourth Congress, Journal, pp. 605–607; Record, p. 2055.

⁴Journal, pp. 608–611; Record, pp. 2055–2067.

⁵Journal, pp. 611, 612; Record, p. 2068.

The Presiding Officer then announced that, the two Houses not concurring otherwise, the full electoral vote of Wisconsin would be cast for Hayes and Wheeler.¹

1980. Objection was made to the manner of appointment of one of the electors of Vermont in 1877; but the vote was counted.—On February 28, 1877,² during the joint convention for counting the electoral vote, the Presiding Officer opened the certificate from the State of Vermont, and the same having been read Mr. William M. Springer, of Illinois, a Representative, presented objections to the counting of the vote for the reason that two returns, or papers purporting to be returns, of the electoral vote were forwarded to the President of the Senate and that only one of said returns had been laid before the two Houses, the President of the Senate having stated that but one return had been received by him from said State. As a part of this objection a duplicate copy of one of said returns was submitted for the consideration of the Senate and House.³

Further objections were presented by Mr. Earley F. Poppleton, of Ohio, a Representative, on the grounds that (1) Henry S. Sollace, certified to have been elected November 7, 1876, was on that day and for a long time before had been a postmaster; (2) the law of Vermont did not authorize the election of said Sollace to fill the vacancy alleged to have been the result of the absence of said Sollace from the college of electors; (3) it did not appear that said Sollace had resigned the office of postmaster at the date of his appointment to the college of electors, which fact was proper to be inquired of by the Commission; (4) it was proper for the Commission to inquire whether Amos Aldrich, who received the highest number of votes next to those cast for Sollace, and who was certified as an elector by certificate No. 2, was not duly appointed an elector.

The Presiding Officer did not recognize the existence of double returns from Vermont⁴ and accordingly did not submit the case to the Electoral Commission.

The Senate then withdrew and the House proceeded to the consideration of the objections. After debate, on March 1,⁵ by a vote of 207 yeas to 26 nays, the House decided that—

the vote of Henry S. Sollace, claiming to be an elector from the State of Vermont, be not counted.

The joint convention having reassembled⁶ the action of the Senate was announced as favorable to counting the vote of Henry S. Sollace. Thereupon the Presiding Officer announced that, as the two Houses did not concur in ordering otherwise, the whole vote of Vermont would be counted.¹

¹ 19 Stat. L., p. 229.

² Second session Forty-fourth Congress, Journal, p. 581; Record, pp. 2021, 2022.

³ The Record (p. 2021) shows that this return had been offered by Mr. Abram S. Hewitt, of New York, a Representative, and the Presiding Officer had declined to recognize it.

⁴ Record, pp. 2022, 2023.

⁵ Journal, pp. 587–603; Record, pp. 2030–2054.

⁶ Journal, p. 604; Record, p. 2054.