Contested Election.

CONGRESS.

*House of Representatives.*

Wednesday, October 12.

*Debate on the Report of the committee of Elections, on the contested election of Wm. McCreery.*

Continued from yesterday's Nov.

Mr. Clay said he high respected for the rights of states and citizens as his fellow-citizen Virginia; but at the same time he could not allow him to the construction of the constitution. It was true that the constitution was not absolutive; it was true that it decided the qualifications of representatives in every respect. The constitution said "No person shall be a representative who shall not have attained to the age of 25 years, and been 7 years a citizen of the U. States; and who shall not, when elected, be an inhabitant of that state in which he shall be chosen?" Would his friend from Virginia say that the states had the right to waive this ground? He believed not. The case was precisely the same with respect to the eligible of the President. "No person except a natural born citizen, or a citizen of the U. States at the time of the adoption of the constitution," &c. He presumed states never included persons passing through a state or residing in it a state for a short time, could not be elected.

If the legislatures of the states had the constitutional right to waive the qualifications they had no right to superaid to them.

Why, he would enlist an argument which the gentleman from Mr. Crowninshield also, as to Philadelphia, was a state representative, there was one from the city, one from the county, and one from the county of Chester, which was true, but did not detract from the merit of his reasoning, but rather strengthened it. There was another argument of the gentleman which deserved consideration. It was that a person might be elected who was not a resident of the district, and who was not entitled to vote as an elector. He believed that an instance of this had occurred in the representation from Pennsylvania, and perhaps it would be admitted that although in Virginia none but freeholders vote at elections, yet this might be a member of that House and not a freeholder. This had been said to be the first case in which this right to be a member has been tried on that floor. The committee would recollect that in the 1st session of the 4th Congress, Cornelius Meade was returned as member of that House; the election was disputed and Mr. Spalding was declared by this House to be duly elected. Mr. Meade was returned as elector under a positive statute of the state of Georgia, which directed that the returns should be made within a certain time, and that till the returns made after the expiration of that time should be void. What was the decision of the House? That no state had a power of making any laws to limit the qualifications of members of Congress. If it were decided that the states had not a right to limit the time of the returns, much more clear was it that they could not interfere with the qualifications.

The constitution of the U. States to the people the right of making an election of representatives of Congress from all the inhabitants who were within the state. He believed the question involved in the case of the people of Georgia decided that the state had a right by law to add to the qualifications of representatives established by the constitution; they decided that the right of the people to choose one of the whole state might be taken away and the liberty of election thus abridged.

Mr. Rhea said he would not detain the committee long. The gentleman from Virginia seemed to be exceedingly tender with respect to the rights of the different states as interested in the pending decision. With respect to the rights of the citizens, nobody who knew him, ever doubted his opinion. When the constitution which he hold in his hand was adopted by the state of Pennsylvania, because it encroached too much on the state rights, he had voted against it; his country had decided otherwise, and it was now from the law of the land. He had taken an oath to support that constitution, and however feeble he was to the rights of the states, he must adhere to that oath. He would make one preliminary remark, that there was a principle in a republican government, of so much importance as any other, to repeal the safety of the government, that the qualifications of the people elected should be firm, steady, and unalterable. By rejecting this report they sanctioned a contrary principle, they could not tell how they might be represented at a future time. By the report of the 3d section of the 1st article of the constitution (to which Mr. R. referred) it was fixed with a precision which could not be controverted what were the qualifications of voters; with respect to residence, could any thing be more precise than the provision contained in the 2d clause of the same section. Now, if they repealed the report of the committee of Elections, they would say that the state might abridge those qualifications which the constitution provided. By the constitution of the U. States every citizen having the qualifications pointed out in that instrument, was qualified to serve as a member of this House; if they repealed the report, they would say that persons although possessing the qualifications pointed out by the constitution could not be entitled to a seat. Hadthey a right to do this? Mr. Rhea said there was a good deal said about negative or positive declarations in the constitution. He had the gentleman say that the states had a right to pass laws of nullification contrary to the laws of the U. States, but the provision of the constitution which directed that they should be bound by the constitution of the United States, the constitution pointed out the same principle.

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Mr. Fisk said there was one part of the constitution applicable in the present discussion, which had not been mentioned. He alluded to the 4th sect. of the 1st art. "The times, place, and manner, for Mr. Randolph said, the gentlemen from Virginia who had so ably defended the right of the states, to fix the qualifications of members of Congress was not so equal and co-extensive with that of the states? Congress might alter such regulations as the states of elections so far as respected time, manner, and place. If the qualifications of members the states had a right to fix qualifications, he must also admit that Congress had a right to do so.

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Mr. Fisk expanded his friend from Pennsylvania that the decision in the case of Mr. Spalding turned not upon the invalidity of the act of Georgia. Her right to pass the law in question had never questioned. Meade it was in proof to the House that in act of God, the great territorial, rendered it physically impossible to receive the law, and there it was dispensed with. It was an unforeseen interposition of Providence, and it was the act of the law of Georgia, in that case. Suppose an elector should be physically hindered in his returns—or should be way laid on the road by the partisans of the opposite candidate and robbed of them—would that deprive the person really elected of his right to his seat? certainly not.

The gentleman from Vermont had quoted a part of the constitution, which had nothing to do with this subject, which by fact was at that day little better than a dead letter. Would the gentleman from Vermont move for a bill to regulate the time, place, and manner of holding elections in the several states for members to that House? After all that could be said, practice long established practice under the constitution, was the best evidence what the constitution was. Powers indisputably exercised by the states ever since the adoption were as much departed from the plain provision contained in the 2d clause of the same section. Now, if they repealed the report of the committee of Elections, they would say that the states might abridge those qualifications which the constitution provided. By the constitution of the U. States every citizen having the qualifications pointed out in that instrument, was qualified to serve as a member of this House; if they repealed the report, they would say that persons although possessing the qualifications pointed out by the constitution could not be entitled to a seat. Had they a right to do this. Mr. Rhea said there was a good deal said about negative or positive declarations in the constitution. He had the gentleman say that the states had a right to pass laws of nullification contrary to the laws of the U. States, but the provision of the constitution which directed that they should be bound by the constitution pointed out the same principle.

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Mr. Bird consenting to withdraw his motion,

Mr. Montgomery offered the following as an amendment to the report:

Whereas William McCreery was a resident of the city of Baltimore in the year 1804, that he resided partly in Baltimore city and partly in the county of Baltimore until the October elections 1804, when he was elected a representative to Congress, in which he continued until the 4th March last, during which time he had a legal residence, and whereas it does not appear that he has abandoned or forfeited that residence,

*Therefore Resolved*, That William McCreery is entitled to his seat in this House.

Mr. W. Alston said that although he might be perfectly satisfied with the reasoning of the amendment just offered, yet he would prefer it. He would not question the correctness of the premises just offered, but did not wish to agree to it in consequence of the reasons which had been given in his favor. He saw no objection to voting for the resolution as reported by the committee, and every member must be satisfied that in voting for the resolution he did not adopt the reasoning contained in the report; for that was the reasoning of the committee and not of the House. If the fact of Mr. McCreery's residence in the county instead of the city of Baltimore had been stated in the report, and also that the law of Maryland was constitutional, he should vote for the resolution. He could have voted for the resolution in exclusion of every other part of the report. It is always proper to do so, because the reasoning of a committee had no weight upon his mind, the reason it was what he looked at. The committee had stated all the facts and in his opinion had wisely avoided giving an opinion on the residence of Mr. McCreery. Every member was left at full liberty to draw his own conclusions from the facts stated, without being biased by the reasoning of one of the standing committees of the House: they all knew what effect the opinion of a standing committee had upon the House.

Mr. A. said that he would, while up, offer a few remarks which he had noted down to believe that he state had a right to add one single qualification to representatives, or to detract from those laid down by the constitution of the U. S. One permit the states to do either from the straight line, where would they stop them? If they were permitted to go one step, were any means provided in the constitution at which they could be stopped? That part of the constitution which has been read by many gentlemen, and which prescribed certain qualifications was possessed of which a person elected might be admitted to a seat on that floor, contained no such restriction. Several states in the union had passed laws on this subject, the state of which he had the honor to be the part representative, had divided the country into districts, and provided that every person representative should have resided within the district for which he was elected, at least twelve months previous to the election. Gentlemen, Mr. A. said he had always believed that had the people of one district been so elect by some other district, possessing other qualifications, as required by the constitution, he would be entitled to a seat. He had understood that the legislature of Georgia had passed some similar qualifications, that no person should be elected a representative unless he was possessed of a fee-field estate. What might be the consequence of this? They might say that no man should be elected who did not possess 50, 1000, or 10,000 acres of land; they might even prescribe the particular quality of the land, or its situation.

The case from Georgia of Meade and Spalding had been so ably argued by the gentleman from Pennsylvania Mr. J. Clay, that he should not dwell upon it: it was certainly a case in point. The legislature of Georgia, in prescribing rules for the conduct of her elections, had said that the returns should be made within 24 days. How did the House act on this occasion, although there was a manifest violation of the law? The House, regardless of that law of Georgia, decided that the member elected should be entitled to his seat. This was a strange conclusion of its impropriety, that a member who was returned by a majority of votes should be entitled to a seat. Mr. B. could only vote otherwise in a case where the right of a sitting member should be shown to have been used.

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The case from Georgia of Meade and Spalding had been so ably argued by the gentleman from Pennsylvania Mr. J. Clay, that he should not dwell upon it: it was certainly a case in point. The legislature of Georgia, in prescribing rules for the conduct of her elections, had said that the returns should be made within 24 days. How did the House act on this occasion, although there was a manifest violation of that law? The House, regardless of that law of Georgia, decided that the member elected should be entitled to his seat. This was a strange conclusion of its impropriety, that a member who was returned by a majority of votes should be entitled to a seat. Mr. B. could only vote otherwise in a case where the right of a sitting member should be shown to have been used.

The constitution of the U. S. when speaking of the qualifications of elections for President and Vice President, varied in its language from that part which spoke of Representatives; "no person shall be eligible to the high point," &c. The constitution in speaking of Representatives, had not set all the states should make qualifications, nor that they might; he therefore thought that power was left with the states individually and not with the general government.

Mr. Rowan was opposed to the amendment because it threw behind the screen the main question, on which the House ought to have a decision. It was the first case in which a decision could be had, and he for the sake of uniformity should be blended with those of the general government, or with those of the individual states in their respective capacity. He held it essential to the sovereignty of the States, that the National legislature should, whenever the question came legitimately before them, decide upon the constitutionality of any law; without such an exercise of its authority, the national sovereignty was positively and most manifestly fatal. It seemed to him essential to the well being of the Union, that the energies with which the sovereignty of the Union was vested should be rendered to the individuals not be encroached on by the state authorities: as the whole to a part, so was the national existence to that of the state, authorities, but where they preserved the national existence they should be particularly careful of the attributes of the state authorities, one of which was now under consideration. Had the legislature of Maryland exercised a power not permitted them by the constitution? If they had, should the sovereignty of the union acquiesce in it? Should they upheld such a principle? Should they hereafter assail it more vitally? No: for in this early period of the government it was not occurred upon which the right of each state can and ought to be decided. It was the proper time to decide upon it. The present is that case. A man had been elected and taken his seat in Congress from the state of Maryland. His election had been contested, because the legislature the sitting member was not a resident in Baltimore, a part of the district from which he was elected. Has the legislature of the state of Maryland the power of thus contracting the sphere of the union? Has it the power of restricting the choice of Representatives to a place, yea, as to other qualifications; they might say, that no man should be qualified to serve in the parliament of the Congress of the United States, who was not a farmer, a mechanic, or any other particular trade? Has they the power of adding qualifications, where would they be in a limit? The Legislature of Maryland illegally exceeded the intendment of a political test; the state legislature might place a qualification on a Representative who was not a federalist? How would the Federalists of Maryland like that part of the constitution which had undertaken to guarantee to the republican form of government? If the Legislature determined that members from the state of Maryland should be possessed of property, that they should be worth five hundred or ten thousand pounds, it might be not be so much towards sinister? If they were to say that all members from the state of Maryland chosen from the town of Baltimore, would it not appear absurd? And yet they had as much right, Mr. R. said, to say that each member should be resident in a particular district, the which would be a most particular place constitution to say that they should reside in the state from which they were elected.

But admitting that the right rested with the state, the question should ever always to be settled by constitution? When was the use of the constitution, if the legislature of a state could fix or vary qualifications? It seemed then, that it was proper for the convention of the United States to fix unalterably the proper qualifications; if they had not done this, it would have seemed to Mr. R. to be doubtful whether the power resided in the legislature of a state. He proposed that a part of the union should have the sole and paramount power of fixing qualifications for the whole of the union? In doing this, did they not legislate for other states? And fixing were the states should not interfere? Mr. R. supposed these gentlemen who in the attempt of the state legislatures to fix qualifications, would be shocked were Congress to assume the power, if Congress possessed every capacity from the people to legislate on this subject, that the power was in the aforesaid legislature. It would be somewhat better that they should; because they would be legislating for the union, and in union better than in small a part of it, a state. He therefore contended that the consideration of representatives to Congress were unalterably fixed in the constitution, and that it was the place to look for them, and not the statute books for it it were, they would be dependent on popularity.

But to ascertain whether the convention defined these qualifications or not, he would first direct the attention of the committee to a few arguments. It was a principle in law, that when a thing was ascertained in writing, it was presumed they had reserved it for further consideration, but if they did not any thing on a subject, it was supposed they had said all they meant. Now, the framers of the constitution had prescribed certain qualifications; if they had intended that any other should be necessary, they would have said so. In the preceding clause they had given to the state sovereignties the right to fix the qualifications of electors; "the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the state legislature." Here they have thrown upon the state legislatures the right and power to fix qualifications to the electors, as well of the members of Congress as of the President and Vice President. And as Congress as the federal

Contested Election.