ARKANSAS.

Edward Cross.

TENNESSEE.

1 District, *Wm. B. Carter*,
2 " Abraham McClellan,
3 " *Joseph L. Williams*.
4 " Julius W. Blackwell,
5 " Hopkins L. Turney,
6 " *Wm. B. Campbell*,
7 " *John Bell*,
8 " *Meredith P. Gentry*,
9 " Harvey M. Waterson,
10 " Aaron V. Brown,
11 " Cave Johnson,
12 " *John W. Crockett*,
13 " *Christopher H. Williams*.

KENTUCKY.

1 District, Linn Boyd,
2 " *Philip Triplett*,
3 " *Joseph Underwood*,
4 " *Sherrod Williams*,
5 " *Simon W. Anderson*,
6 " *Willis Green*,
7 " *John Pope*,
8 " *William J. Graves*,
9 " *John White*,
10 " *Richard Hawes*,
11 " *L. W. Andrews*,
12 " *Garret Davis*,
13 " William C. Butler.

OHIO.

1 District, Alexander Duncan,
2 " John B. Weller,
3 " *Patrick G. Goode*,
4 " *Thomas Corwin*,
5 " William Doane,
6 " *Calvery Morris*,
7 " *William Bond*,
8 " *Joseph Ridgeway*,
9 " William Medill,
10 " *Samson Mason*,
11 " Isaac Parish,
12 " Jonathan Taylor,
13 " D. P. Leadbetter,
14 " George Sweeny,
15 " *John W. Allen*,
16 " *Joshua R. Giddings*,
17 " John Hastings,
18 " D. A. Starkweather,
19 " Henry Swearingen.

MICHIGAN.

Isaac E. Crary.

INDIANA.

1 District, *George H. Proffit*,
2 " John Davis,
3 " John Carr,
4 " Thomas Smith,
5 " *James Rariden*,
6 " Wm. W. Wick,
7 " T. A. Howard.

ILLINOIS.

1 District, John Reynolds,
2 " Zadok Casey,
3 " *John T. Stuart*, [c.]

[c.] Mr. Stuart has the Governor's certificate of his election, and Stephen E. Douglass, Democrat, has a majority of the votes of the people of the District.

RECAPITULATION.

	Democrats.	Federalists.	Contested.	Vacancy.
Maine,	6	2		
New Hampshire,	5	0		
Vermont,	2	3		
Connecticut,	0	6		
Massachusetts,	2	9		1
Rhode Island,	0	2		
New York,	19	21		
New Jersey,	0	1	5	
Pennsylvania,	17	10	1	
Delaware,	1	0		
Maryland,	5	3		
Virginia,	13	8		
North Carolina,	8	5		
South Carolina,	8	1		
Georgia,	0	9		
Alabama,	3	2		
Louisiana,	0	3		
Mississippi,	2	0		
Arkansas,	1	0		
Tennessee,	6	7		
Missouri,	2	0		
Illinois,	2	0	1	
Indiana,	5	2		
Kentucky,	2	11		
Ohio,	11	8		
Michigan,	1	0		
	121	113	7	1

TWENTY-SIXTH CONGRESS---1st SESSION.

(From the National Intelligencer.)

Monday, Dec. 2, 1839.

IN SENATE.

Conformably to the Constitution, the Senate convened this day, Mr. King, President *pro tem*. in the chair. The credentials of Mr. Tappan, of Ohio, Mr. White, of Indiana, and Mr. Betts, of Connecticut, having been duly presented and read, they were severally qualified and took their seats. There were present—

From Maine, Messrs. Ruggles and Williams.
From New Hampshire, Messrs. Hubbard and Pierce.
From Massachusetts, Mr. Davis.
From Rhode Island, Mr. Knight.
From Connecticut, Mr. Betts.
From New York, Mr. Wright.
From New Jersey, Messrs. Southard and Wall.
From Pennsylvania, Mr. Buchanan.
From Delaware, Mr. Clayton.
From Virginia, Mr. Roane.
From North Carolina, Mr. Brown.
From South Carolina, Mr. Calhoun.
From Georgia, Mr. Lumpkin.
From Kentucky, Messrs. Clay and Crittenden.
From Tennessee, Mr. White.
From Ohio, Messrs. Allen and Tappan.
From Indiana, Messrs. Smith and White.
From Mississippi, Mr. Walker.
From Illinois, Messrs. Robinson and Young.
From Alabama, Messrs. Clay and King.
From Missouri, Messrs. Benton and Linn.
From Arkansas, Mr. Fulton.
From Michigan, Mr. Norvell.

On motion of Mr. Walker, the Secretary of the Senate was directed to acquaint the House of Representatives that the Senate has formed a quorum, and is ready to proceed to business.

On motion, a committee was appointed, (by the Chair,) consisting of Mr. Wright and Mr. Allen on the part of the Senate, to join such committee as may be appointed by the House of Representatives, to wait on the President of the United States and inform him that quorums of both Houses had assembled, and that they were ready to receive any communication he might be pleased to make.

Mr. Benton then gave notice that he would on tomorrow introduce a bill for the summary recovery and collection of small notes in the District of Columbia.

The Senate then adjourned.

HOUSE OF REPRESENTATIVES.

An unusually full assemblage of Members elect of the House of Representatives being convened in the Hall, at twelve o'clock precisely, the Clerk of the House at the last session, Hugh A. Garland, Esq. (who continues to be Clerk until another election is made to that office,) rose at his desk, and said that, in conformity with the practice heretofore observed, he was now ready, if it was the pleasure of the House, to call a List which he had formed of members elect of the House of Representatives for the twenty-sixth Congress, at this its first session.

No objections being made, the Roll was commenced, and the members from the several New England States, and also those from the State of New York, having answered to their names as follows:

Maine.—Nathan Clifford, Albert Smith, Benjamin Randall, George Evans, Virgil D. Parris, Hugh J. Anderson, Joshua A. Lowell, Thomas Davee.

New Hampshire.—Charles G. Atherton, Jared W. Williams, Tristam Shaw, Edmund Burke, Ira A. Eastman.

Massachusetts.—Abbot Lawrence, Leverett Saltonstall, Caleb Cushing, William Parmenter, Levi Lincoln, George N. Briggs, William B. Calhoun, William S. Hastings, Henry Williams, John Reed, John Quincy Adams, (One vacancy)

Rhode Island.—Joseph L. Tillinghast, Robert B. Cranston.

Connecticut.—Joseph Trumbull, William L. Storrs, Thomas W. Williams, Thomas B. Osborne, Truman Smith, John H. Brockway.

Vermont.—Hiland Hall, William Slade, Horace Everett, John Smith, Isaac Fletcher.

New York.—Thos. B. Jackson, Jas. de la Montayne, Ogden Hoffman, Edward Curtis, Moses H. Grinnell, James Monroe, Gouverneur Kemble, Charles Johnson, Nathaniel Jones, Rufus Palen, Aaron Vanderpoel, Jno. Ely, Hiram P. Hunt, Daniel D. Barnard, Anson Brown, David Russell, Augustus C. Hand, John Fine, Peter J. Wagner, Andrew W. Doig, John G. Floyd, David P. Brewster, Thomas C. Chittenden, John H. Prentiss, Judson Allen, John C. Clark, S. B. Leonard, Amasa Dana, Edward Rogers, Nehemiah H. Earl, Christopher Morgan, Theron R. Strong, Francis Granger, Meredith Mallory, Seth M. Gates, Luther C. Peck, Richard P. Marvin, Millard Fillmore, Charles F. Mitchell.

The Clerk next proceeded to the State of New Jersey, and called the name of Joseph F. Randolph. Having done so, he paused and stated that there were five of the seats belonging to Representatives of this State which were contested, and, not feeling it to be his duty to decide the question of a right to them, he would, if such a course should be approved by the House, pass over the remaining names until the other States should have been gone through with, after which he would submit such evidence as was in his possession touching the rights of the several claimants to seats from that State.

Many voices cried "Agreed! agreed!"

Mr. Wm. Cost Johnson objected to having the State passed over until it was decided who were her Representatives in this Congress.

Mr. Maxwell, of New Jersey, now rose and addressed the House for a few minutes: objecting to the course of passing over the State of New Jersey in calling the roll. He demanded that the evidences of the titles to seats from New Jersey, which were in possession of the Clerk, should be read; and if no flaw was to be found in the certificates of election of himself and colleagues, that they should be admitted to equal rights with other members, none of whom would have higher pretensions, on this floor.

The Clerk then stated that he had a certificate of the Governor of New Jersey declaring William Halsted (whose name stood next upon the roll) to have been duly elected a Representative from that State.

Cries of "Read! read!"

The Clerk thereupon read Mr. Halsted's certificate, and then declared that he had in his hands other certificates in precisely the same form in favor of John B. Aycrigg, J. P. B. Maxwell, Thos. Jones Yorke, and Charles C. Stratton.

Mr. Mercer moved for the reading of the law of New Jersey on the subject of Congressional elections.

Mr. Cave Johnson objected to having the law read until the evidence in favor of any other claimants to the seats had first been read.

Mr. Mercer said that the object of his motion had simply been that the law and the testimony in the case might be presented together.

Mr. Cave Johnson insisted that all the evidence on both sides should first be heard; after which he had no objections to the reading of the law.

Mr. Vanderpoel, of New York, also urged the propriety of submitting all the facts first, and then the law which related to the case. He understood that there was conflicting testimony in relation to a right to these seats in the hands of the Clerk; the testimony on one side had been read, let that on the other be read also.

Mr. Tillinghast, of Rhode Island, said it would make not the slightest difference which was read first—since all would doubtless, sooner or later, be read; the order was immaterial. But the call had been made for the law of New Jersey, in order that it might be decided what sort of evidence could be read, from either party, in conformity with the law. He therefore should consider it more convenient that the law should be read at once, in order to determine that point.

Mr. Jenifer of Maryland said he understood the Clerk to say, that he had received five other certificates in the same form with that which had just been read; were there any more than these six? If not, why did he not call the names of the other certified members, as he had that of Mr. Randolph?

Mr. Rives of Virginia recommended that this whole matter be laid upon the table until a quorum of the House should have been obtained: then there would be a House which could do something: till then nothing could be done, because there was no House to do it.—He thought gentlemen on both sides had better, at once, acquiesce in this course by general consent. When there was a House of Representatives, although it might not yet be regularly organized, a question could be put and decided: now no question could even be put.

Mr. Maxwell again spoke; again insisting on an immediate decision on the rights of those who had presented regular credentials to take their seats.

The Clerk now said, that there were three distinct propositions, on which the House was requested to vote: first, that the law of New Jersey, touching elections, be now read: secondly, that the testimony in favor of the opposing claimants be first read; and thirdly, that the whole subject be, for the present, laid upon the table.

Mr. Wise. Who are to vote to lay it on the table?—Is there a quorum of members called? If not, are less than a quorum to vote? If any question shall be put before we have a quorum of members whose seats are not disputed, we shall get into endless confusion.

The Clerk said, that if he was permitted to reply, he would state it as his own judgment, that there was no possible mode of deciding on the admission of claimants to the remaining seats of the New Jersey delegation until the calling of the roll should have been gone through with. This could be done only by general consent.

Mr. Wise. Does that mean universal consent? If any one objected, could it still be done? Were those who claimed seats to vote on that question?

The Clerk declined deciding in the case.

Mr. Mercer objected to the proposal of his colleague, (Mr. Rives,) who seemed to desire that the House should vote to lay a subject on the table before it was ascertained whether there was a quorum present. He had desired to have the law of New Jersey read before the remaining testimony in the hands of the Clerk, but he should not insist upon this: if gentlemen preferred it, let all the testimony be first gone through with.

Mr. Rives explained. He had not proposed that a vote should be taken, but that, by general consent, the question in relation to these seats should for the present be laid aside. He hoped that such would be the disposition of all present? When the roll had been gone through with, it would doubtless appear that a quorum was present. The House could then return to this subject, take it up, hear the evidence and the law, and come to a correct decision.

Mr. Hoffman, of New York, said that the proposition was to proceed and complete the calling of "the roll." Of what roll? Who were members of the House?—Who but such as held the regular legal certificates of their election by the People? Mr. H. asked the Clerk by what right he had called his own name? Was it not on the regular legal evidence of his election?—And if the gentlemen from New Jersey produced the same evidence, had they not the same right to their seats? If, indeed, there were two sets of claimants, and both produce the certificates of the Governor, in conformity with the law of their State, then there might be room to hesitate; otherwise, how could there be? If the laws of New Jersey declared that, to entitle a man to act as its Representative in Congress, he must have a certificate, signed by the Governor, that he had been duly elected, would the Clerk dare to insert upon his roll the name of any man not bringing such a certificate? Suppose a set of men should get together, and draw up depositions that Mr. H. had not been duly elected by the People, would the Clerk, on such depositions, dare to reject the commission Mr. H. presented to him in due form of law, and refuse to place his name upon the roll? He insisted on the reading of the New Jersey law; they had no right, on the threshold, to pass it over, and disregard its provisions. They had no right to set aside or postpone the claims of men presenting themselves as the Representatives of a sovereign State, and bringing in their hands the legal proofs of their official character and rights.

Mr. Halsted, of New Jersey, said that he demanded, as the Representative of one of the sovereign States of this Union, that his name be called. The only reason the Clerk had given for not calling it was, that there were certain other claimants to the seats of those whose names he had mentioned, but had not called as on the roll of the House. Would the Clerk say that other persons had come to him with commissions in their hands under the broad seal of the State—that attestation which represented the sovereignty of the State in its most solemn form?—a form of evidence known to the usages of the State from the earliest days of its political existence. Would he say that? If the Clerk would produce such certificates in support of the other claimants' demand, Mr. H. would then consent that the question should be passed over as proposed; but he could not consent—merely because certain gentlemen, however personally respectable, might suppose that they had valid evidence of their right to seats, though that evidence was not according to the laws of New Jersey, or in conformity to any decision of this House, or of any Parliamentary body since the remotest ages of our Saxon ancestors—that one of the stars in the galaxy of our national sovereignty should be stricken out while he and his colleagues stood recreant by, without lifting their voices in the assertion of the rights of the State, and without insisting, as it was their bounden duty to do, that her seal should be received as even *prima facie* evidence of the rights of her Representatives claiming in her name. He was entirely willing that any other gentlemen should be received here with the same courtesy as himself and his colleagues, provided they produced evidence in conformity with the law—if they brought in their hands certificates duly signed by those public functionaries whose express and exclusive right and duty it was to certify the election of Representatives. But if they produced no such evidence, what right had that House to reject the proof which was in conformity with law? The Constitution declared that the times, places, and manner of holding elections should be prescribed in each State by the Legislature thereof; and until Congress took it into their own hands to examine into the regularity of such elections, the decisions of the State authorities must of course be conclusive as to the rights of those returned as elected. The House of Representatives was the only body which had authority to decide as to the qualifications of its own members: and Mr. H.'s position was, that until such a House was duly organized, certificates in the legal form were to be received as *prima facie* evidence of membership. They could only be set aside by the Representatives of the People of the United States in Congress assembled—after a Speaker had been chosen and the members sworn. If that position was a sound one, then who here had any right to decide that New Jersey should be blotted out from among the States, and the names of her Representatives omitted on the roll of Congress? If gentlemen undertook now to decide this question, under what official solemnity would they act? Under none. They had not taken the oath of office, and they had no right to rush to a decision which might compromit and destroy the most solemn and precious rights of men. How was Mr. H. to tell who were entitled thus to pass upon his rights and upon those of his State? Would the Clerk decide? Was Mr. H. to vote on that question? The question had already been decided, and decided by a competent tribunal, and that decision must stand: it must stand as well from the necessity of the case as from all the force of precedent. He was willing to read the law, but he did not insist that it should be heard before any other testimony the Clerk might hold in his hands. The law of New Jersey required that the Governor and Council should determine which of the candidates in a State election had received the most votes, and should give to such persons commissions under the great seal of the State. The Governor in Council had decided, and had given such commissions duly authenticated, and it was of no consequence, in this argument, whether that officer had done right or wrong; if he had done wrong, the House, when duly organized, had the power to correct the wrong. He should not now touch that point at all; it was totally foreign to the matter now to be settled.—Whatever the decision of the Governor might have been, it must stand as valid until reversed by a competent tribunal. He would read the provision of the law:

"Sec. V. The Governor, or person administering the Government, shall, within five days after receiving the list, lay the same before a Privy Council, to be by him summoned for that purpose, and, after casting up the whole number of votes from the several counties for each candidate, the said Governor and Privy Council shall determine the six persons who have the greatest number of votes from the whole State for Representatives in Congress from this State, which six persons the Governor shall forthwith commission, under the great seal of the State, to represent this State in the House of Representatives of the United States."

We bring such commission, and the Clerk is bound to receive it as *prima facie* evidence of our right to sit here. Such is the law of Parliament. Mr. H. here quoted a law of Parliament passed in the 7th and 8th years of William and Mary, declaring that members returned by the sheriffs are sitting members until Parliament, on petition, shall judge their election to have been illegal.—He said that the same principle had been settled by the House of Representatives over and over again; and in confirmation of this statement referred to the decision by the House at the late special session in the case of Messrs. Claiborne and Gholson. He also quoted other precedents from the "Cases of Disputed Elections," pages 156, 728, and 729. There was no case in all the history of the House where a regular legal commission had been rejected before the House was organized. And this was according to all law every where. Nothing was better settled than that the decision of a regular tribunal appointed by law to decide such matters, must, when the same question came up before any other tribunal, unless in cases of appeal, be received and admitted as *res adjudicata*, according to the maxim, *res adjudicata pro veritate accipitur*. He therefore insisted that in justice to the laws of New Jersey, and the public officers of that State as well as the commissioned members, the names of such members ought to be placed upon the roll. If other gentlemen claimed the seat, and could prove their right to it, let them proceed regularly by petition. Let them show, if they could, that the Governor had done wrong in granting such certificates; when that question came up, Mr. H. trusted he should be able to show that the Governor had done right. He appealed in the meanwhile to all honorable and high-minded State rights men, not to let the regular acts of State authority be wantonly set aside. Were it their own case, would they not gallantly stand up for the authority of their States?

As to the other testimony to which the Clerk had alluded, Mr. H. understood it to consist of a certificate obtained from the Secretary of State of New Jersey, under the seal of his office, not under the broad seal of the State, in favor of the other candidates. But the Secretary of State was not the reporting or certifying officer known to the law; he had no legal authority to give such a certificate: it was, in reality, no certificate at all. Besides, it did not pretend to state any official returns of the election, but only the personal understanding of that officer as to the general result. A certifying officer could only legally certify to records; he had no authority to certify what might be his own personal opinions: and even if this Secretary of State were the authorized officer to certify election returns, the certificate he had given was not in the usual form.—Mr. H., however, had no objection that his certificate, such as it was, should be read.

Mr. Tillinghast, of Rhode Island, said that the gentleman from New Jersey who had just taken his seat, had openly claimed to have his name called in the list of Representatives from that State. The gentleman whose name had immediately preceded his had presented a commission in precisely the same form, and in strict conformity to the laws of the State. The Clerk had then stated that he held five other commissions in the same identical words, all signed by the Governor—the only regular organ of communication between the State and this House—the only difference being that one of them contained the name of Mr. Halsted, and the former the name of Mr. Randolph. Now, the Clerk had actually called the name of Mr. Randolph on the strength of nothing else but such a certificate, and nobody had uttered an objection to it. Was it, then, a very extraordinary thing that Mr. Halsted should now demand to have his name called also? He could not see on what ground any difference should be made. The Clerk had acted as the temporary organ of the body of men now present, (a body met, not for the purpose of settling questions, not to revise elections, not to settle laws;) and by their universal consent he had, without a solitary sign of objection in any quarter, called the name of Mr. Randolph as entitled to a seat. All agreed that he had done right. Mr. Halsted now came forward and claimed the same privilege. When did the privilege of a member of Congress commence? Mr. Jefferson, in that chapter of his Manual which treats on Privilege, had stated that privilege from arrest commenced from the election of a man to be a member, though he could not act as such until duly sworn: and then he proceeded to declare, in words to which Mr. T. called the solemn attention of all around him, that every man must, at his peril, take notice who were *returned of record* as duly chosen. All persons who were bound to do, or to abstain from doing any thing, in consequence of the election, were bound at their peril to take notice who they were who were *returned of record*. Mr. T. proceeded to observe that there were two distinct powers exercised in the matter under consideration: one was the power to make and to declare an election of Representatives to Congress; and the other was to judge of the validity of such election.—These powers were wholly distinct from each other.—The first power was to be exercised by the People and by certain public officers within a State; but Congress had passed no law on the subject further than to require the States to elect Representatives—all the rest had been left exclusively to State legislation, and, under such circumstances, the laws passed by any State were binding on Congress and on all other persons.—The second power was to be exercised by the House of Representatives, when duly organized and authorized to vote on matters falling within their jurisdiction.—The assemblage of gentlemen here present had met for the purpose of giving validity to such a House; but it was not the House. They were not authorized to judge whether the election of members from New Jersey was valid or invalid; it would be an assumption to attempt it.

Now, in the interval between the exercise of these two powers, there must exist some such evidence of the exercise of the first of them, as all persons were bound to respect, and to which they must yield their credence. He appealed to the common sense of all who heard him if this must not be so. And if it was so, there must be a provision in the laws of every State to furnish such evidence. Accordingly, some States had declared that the returns of the sheriffs should constitute it. And where such returns were made, they immediately, *ipso facto*, exempted from arrest the persons of all whose names were so returned: a man thus returned could not be refused any of the privileges legally and constitutionally pertaining to a Representative of the People. In other States, only a certificate of the Governor was necessary: and there, such a certificate had power to confer a like exemption, and invest with like privileges, until its validity was destroyed by some authority competent to destroy it. The laws of New Jersey had prescribed the form of a commission: and no commission of the commanders of our Army or Navy more effectually invested their holders with their respective offices, than did this commission to members of Congress. Now, the body here present consisted of men who had a concern in this matter—they were bound to notice it, and must, at their peril, observe who were declared members *of record*. And all action of persons every where, touching the whole matter, must be governed in like manner. The evidence required by law must every where receive credence. Some have already been admitted on this very evidence: and he could not for his life see how others, producing the very same, could be rejected. If no claim had been advanced, the case might be different: but a claim had been openly set up, and he did not know how it was to be refused.

Mr. Fillmore appealed to all gentlemen around him to give consent that all the facts might be laid before them. He was not solicitous as to the order, but gentlemen seemed to have assumed both facts and law, of which he was personally ignorant. He, therefore, implored that without further delay both might be spread before them.

Mr. Slade asked to what purpose it would be to read the law? Was it for the purpose of any action by any body? If so, by whom? It would be idle for the Clerk to read, unless it were to enable somebody to decide upon some question. But here were none to decide any question. The Clerk had made out a list of certain persons whom he supposed to be members of the House of Representatives; yet he had nothing more, in most cases, than newspaper evidence to go upon. He had acted according to usage both in making the roll and in calling it. He had called the names in the usual order, according to the order of States; but he might, at pleasure, have adopted any other order. He might have arranged the names alphabetically: and in that case the name of one of the New Jersey members commissioned would have been at the very foot of the list—(Mr. Yorke.) He had called one of these members, and none had objected, and then he had mentioned five others who had similar credentials. In what position were gentlemen placed? Were they to decide who were *prima facie* members from New Jersey, and who not? This question lay immediately before them; they could not proceed a step till it was decided. But how could it be decided? There was no House to decide it.—True, some 80 or 90 names had been called; but the Hall was filled with others whose names had not. Who could tell who were entitled to vote? Gentlemen were talking to no purpose. The candidates might beat the air and bay one another, but the assembly would be just where they now were. When a quorum had been formed and duly sworn, then, and not till then, could the question be settled. There was no use in speculating—he was for looking at the case practically. He could have wished the Clerk, instead of referring the question to the House, (and there was no House,) had said, "I take the responsibility," and settled the question himself. Mr. S. saw no other practicable way.

But gentlemen said, "go through the roll, and then you will have a quorum." But would the others have a right to decide? The gentleman from New Jersey contended they had not. How then was it to be decided? Would it be left to an agreement between the claimants? He believed it would be long before they could agree. And if they did not settle the question, who was to settle it? He said, the moment there was a quorum called and ascertained to be present, then there would be a House of Representatives, and that House it was which must decide who were *prima facie* members from New Jersey. What was the House of Representatives? Was it necessary that it should be organized before it could act? It seemed to him not.—Who was to organize it? Five gentlemen on one side insisted they must vote in the organization. Five others insisted as hard on the other side that they must, and the others must not. As soon as there was a quorum, there was a body which was *pro hac vice* a House of Representatives, and they were entitled, under the Constitution, to settle the question. They could as well do this as they could elect a Speaker.—The Constitution declared that "the House of Representatives should elect a Speaker;" then they were a House before they elected a Speaker—that is, before they were organized. He therefore came, on the whole, to the conclusion, that as there was no body to decide this question, and no body to put the question to, till there was a quorum, the Clerk be advised to take the responsibility, and settle it himself.

Mr. Mercer said he had a proposition to submit.

[Mr. Biddle claimed the floor, having, as he thought, risen first; but the Clerk having no authority to decide, and there being no rules of order to decide by, Mr. B. gave way, and Mr. M. proceeded.]

Mr. Mercer said the gentleman from Vermont had asked what use there could be in reading papers when there was nobody to decide upon them? But the gentleman had, in a great measure, answered his own argument. He had maintained, and truly, that there must be a House before there could be a Speaker: but why? Simply from the necessity of the case. And the same necessity existed here. The gentleman wished the Clerk to decide—what? The Clerk of the last Congress decide who are the members of this House?—The Clerk to make any portion of the members elect whom he chose first to call a House of Representatives? And this to be done by one who was himself a candidate for the suffrages of the House? As soon as he had called 122, were they then to decide on the rights of all the rest? Surely not. Necessity required that the Clerk must admit those who presented valid credentials. Mr. M. had asked to have the law read: when that law was heard, the case was as clear a one as ever had been presented to that House. Mr. M. then insisted on the right of each State to prescribe its own mode of conducting and of certifying elections, and denied that the Secretary of State of New Jersey had any right to communicate with this House as an organ of that State. That belonged to the Governor. The gentlemen here present had the right to make a roll of *prima facie* members? Who had robbed them of that right? The Clerk of the House? Was he to go contrary to the records of the States? It was a monstrous idea. Suppose he should choose to call those members only who resided North of the Potomac: would they be the House of Representatives of the United States? Surely not. If the House were as powerless as the gentleman from Vermont seemed to suppose, he saw not where the matter was to end; they might never get any House at all. But no: necessity gave them power. Mr. M. here referred to the case of Claiborne and Gholson, and the overwhelming vote by which he had been put down in an attempt to set aside their certificates on the ground of an unconstitutional election; the House had insisted on the validity of their certificates, (though these had been left at home, and their own averment was received as proof,) and they had accordingly been admitted to their seats on far weaker evidence than was now presented by the gentlemen from New Jersey. He implored the House not to say that the Clerk had power to call gentleman in any order he pleased, and make such a House as he pleased. God forbid that Congress should ever be reduced to such a state of things as that.

Mr. Johnson, of Maryland, said that when he had first risen to object against the Clerk's calling the name of any other member, he had done so from a desire at once to bring to the consideration of the gentlemen present the embarrassment under which they must necessarily be, when once they departed from the laws and the established usage which had characterized that House from the formation of the Government to the present time. He desired them to discover at once how perfectly at sea they would be if the Clerk was suffered to gratify his own judgment at the expense of the fixed custom of the House of Representatives. Since the House had assembled this morning, he had taken occasion to look into the past course of Congress, and he found that it had been the immemorial usage of the Clerk to call the names of those who held certificates of returns by the authority of the several States, as expressed by the laws of those States. He held in his hand a certificate from the Governor of his State—signed by the hand of the Governor, under the seal of the State—and under which certificate of election he (Mr. J.) presented himself here. If the House were about to depart from the usage which had, up to this time, governed its organization, he at least, as a member representing a portion of the People, felt bound, at once, to deny the authority of the House to proceed further; and, if it did so, he, for one, would not recognise those proceedings. I admit, (continued Mr. J.,) because the Constitution so declares, that this House can judge of the returns and qualifications of its own members. The House can either exercise or usurp power, as it pleases. It can, if it pleases, abuse its power by the disfranchisement of a portion of its members, or otherwise. All that I have to say is, that I shall not be instrumental in that abuse, nor will I, by my voice or vote, countenance or recognise it. If it is to be left to the Clerk to say whom he will or whom he will not name as returned members, who can tell where the mischief might end? Whole districts, probably a whole State, might be thrown out of its representation. My course is taken. If the Clerk is to depart from the uniform course of his predecessors, I, for one, shall decline answering to my name, and shall thus refuse to recognise in him the authority to do that which I believe he has no right to do. The very moment he steps beyond his power, I, for one, shall not recognise his acts.

Mr. J. then proceeded to refer to the cases of various contested elections, in which, he contended, the very question now under discussion had been abundantly decided. He referred to the case which occurred at the first session of the first Congress, in which the seat of the New Jersey delegation had been contested on the ground of informality and corruption in the election.

To the case of *Spalding vs. Meade*, of Georgia, at the ninth Congress, first session.

To the case of *Turner* vs. *Baily*, at the eleventh Congress, first session. In this case, Turner had the majority of votes. Baily was commissioned. Turner claimed the seat, and got it; but Baily held it and acted as a member a long time.

To the case of *Williams* vs. *Bowers*, at the thirteenth Congress, first session. Williams had a majority: Bowers was commissioned, and acted through one session and part of another, when the House, by a unanimous vote, decided in favor of Williams.

To the case of *Willoughby* vs. *Smith*, at the 13th Congress, 1st session, (presenting the same features as the case last mentioned.)

To the case of *Root* vs. *Adams*, at the 14th Congress, 1st session. Here Adams was commissioned, and voted in the House until such time as the House decided that Root was entitled to the seat.

To the case of *Mallory* vs. *Merrill*. Here, as in the case last cited, Merrill held the seat a long time, until, by a vote of the House, it was given over to Mallory.

It would thus be perceived, (Mr. J. continued) that the Clerk could not be allowed to look either beyond or behind the certificates of election; and he (Mr. J.) objected to the Clerk exercising the power of the Clerk, unless he exercised it in the manner in which it had been exercised by all his predecessors: that was to say, by recognizing those who had presented themselves here under the high sanction of the laws of the several States, and under the seals of those States. If there had been fraud or deception, let it be investigated at the proper time. He repeated, that he, for one, would not recognize any departure from the established usages of that body; nor would he give his sanction to the exercise of a power which he doubted whether the House could exercise rightfully, though they might do so wrongfully. He disclaimed any imputation of motive, and concluded by expressing the hope that the members would at all events allow the law of the State of New Jersey to be read.

Mr. Biddle was understood to say that the question for decision was, whether this was the appropriate stage to pass upon the disputed point of election. Was this the proper time, or should the matter be deferred until some other time? It had been proposed that the names of the members from the State of New Jersey should be passed over, that wherever there was a dispute the name should be passed over, and that those members who were thus admitted to their seats should be the judges of the election of those whose seats might be disputed. This course seemed to have been drawn from the practice of courts of law. In the case of insolvent debtors, when any dispute arose, he believed the name was passed over, and another was called. Now, he would ask whether this was the analogy which ought to be pursued in relation to the rights of the People? whether this body had a right to say that any State or People should be for a moment disfranchised? that the Representatives of one sovereign State should stand aside and be deprived of the privileges which were bestowed upon Representatives from another? Did not gentlemen perceive the enormous consequences that must result from such a proceeding? that it would go forth to the next Congress and to the world as a precedent for future time? If that course were adopted now, why should it not be so forever hereafter? It would only be necessary to say, "the seat of this gentleman or that is disputed," and he will lose his seat.—Did not gentlemen perceive that, at the opening of every session, the struggle would be to dispute the seats of members? What more easy? It would cost nothing, and the result would be that the judges would be narrowed down to the limited number of those whose seats might happen not to be disputed—say some twelve or twenty in number. This result assuredly would be produced, if the course suggested by the gentleman from Virginia (Mr. Rives) was pursued—because it had been assumed here that it was *something* to be called—that this put a badge upon a man—that it was a sort of guaranty that he was not an impostor. This was worth something. Did not gentlemen see that monstrous abuses would follow?

What, he would inquire, was the theory of our present position? He took it that the Clerk was the mouthpiece of this body—a body not yet organized. Still, however, it was a body met for the despatch of business. Did not the language which fell from the Clerk's own lips prove that this was his own construction of the matter? The Clerk had looked round and had asked whether it was the pleasure of the House that he should do so and so; and, in so doing, he had acknowledged that this was, for some purpose, a body—which body was authorized to instruct him. He had been permitted to call the roll. He had decided that the credentials of the members from the State of Massachusetts were in due form: he had invested those members with the badge of office, and he had said that they were members. Why had he done this? He had examined their credentials and the laws bearing upon them, as it was his duty to do, and he had said that these credentials were conformable to the laws. Did not this show that he considered this to be his duty in the first instance? He (Mr. B.) contended that the Clerk, where there was a case which satisfied his own judgment, was bound to act upon it: and that if, as a man of honor and truth, the Clerk had no doubt which set of credentials conform to the law of the State, he was bound to announce to the House the names of the gentlemen whose credentials did so conform. He had already discharged that duty with respect to others; why then shrink from it now? Why not do with the members from New Jersey as he had done in the case of the members from Massachusetts? It seemed to him (Mr. B.) to be one of the plainest duties that could be imposed upon a man.

Did the credentials of the members from New Jersey conform to the law of that State? If, in the opinion of the Clerk, they did not—if a doubt existed which had complied with the requisitions of the law—if his judgment was at fault, the matter was to be referred to the House, and the House might pass upon it. Or if the Clerk made a decision which was erroneous, or alleged to be so, then also there was an appeal to the House. It was this House, or this body, (by whatever name it might be called,) whose advice the Clerk must ask: but in the first place, he was called upon by usage to exercise a sound judgment in the premises, and, upon either side, an appeal would lie from that judgment. This body possessed the same right which their fathers possessed when they threw off the British yoke, when under the necessity of taking some new form of organization. The onus, in the first instance, was thrown upon the judgment and conscience of the Clerk. Upon that best judgment he was bound to act: and, if any thing was wrong, there was an appeal. If the case was so doubtful that he could not come to a conclusion, then, probably, he had a right to ask the advice or opinion of this body.

Mr. Slade desired to say a word in explanation of his former argument—which was, that a bare quorum of the House might decide upon the qualifications of its members. He had not been in the habit of arguing, from the abuse of power, its non-existence. He had spoken of that which, from the necessity of the case, must be done. He had spoken of the power granted to the Clerk of the old House by immemorial usage.—Now, when the Clerk had called the names until a quorum had been formed, he (Mr. S.) contended that, in strictness, the Clerk would then have a right to put it to that quorum to decide as to the rights of the members. But no one would act according to such strictness. Every one would perceive that the fair spirit of the rule required the Clerk to go through the call; and it would be a violation of the spirit of the rule to call over a bare quorum. The spirit of the rule, as every man of honor would admit, required the Clerk to go through all the names, and to see who were entitled to their seats and who were not, by something in the shape of *prima facie* evidence.

The Clerk had to do one of two things in the present case: he had either got to take the responsibility of deciding which of the ten contesting members from the State of N. Jersey were entitled to their seats, or to say his judgment was at fault, and that he could not decide. Which should he do? To his (Mr. S.'s) mind there could be no dispute on that point. Did not gentlemen know that if they put the Clerk to the alternative of saying who were entitled to their seats, they thereby compelled him either to perform what might be almost an impossibility, or they put it in his power to perform an act which might result in consequences more serious than would follow from a mere decision to put down any name? The case was environed with difficulty on every side. Something must be done to organize the House; and what was it?

[Mr. Mercer was understood to inquire by what power the first House organized. There was no Clerk there.]

Mr. Slade said, neither was there any usage. They might have organized by calling some gray-haired man to the Chair—by doing as was done at the meeting in Faneuil Hall or at Philadelphia. They might have called some one to the Chair as a Moderator or a Speaker—that resulted from the necessity of the case. He did not say that the mere fact of one man coming to contest a seat would make such a case as would justify the clerk in acting. By no means. There must be a color of claim. I do not mean a color of an idea, as was once suggested here, but a color of claim, to justify the Clerk in acting at all. He must act here upon his conscience. If a man came here with a certificate of election from a Governor or Secretary of a State who has no authority to issue it, let the responsibility rest upon those who had abused their power. All of us acted under a responsibility to public opinion. There were a thousand cases in which power had been abused in this country, but that abuse of power did not justify the conclusion, that there was no power at all. In this Government of freedom, those who abused their power were responsible for it. The gentleman from Pennsylvania (Mr. Biddle) had himself admitted that when the judgment of the Clerk was at fault, he must defer the matter to the House, and that the House must decide. This was precisely his (Mr. S's.) view. But the question presented itself, What was this House? Who were the House? Suppose the yeas and nays were called, who were to answer? This appeared to him an insurmountable objection: and he would rather run the risk of the other course he had named than of the consequences which must result from this. He was prepared in this and all other cases to do his duty here, and let the consequences take care of themselves. If the gentlemen from New Jersey should be improperly put out of their seats by the action of this body, great injustice would no doubt be done: but yet, if that injustice was done in the execution of a fair rule, it must be left to the people to decide the question, whether the power of this body had been abused. He confessed his understanding was too obtuse to enable him to point out any other mode of settling the difficulty.

Mr. Sergeant (though heard very imperfectly) was understood to say that he regarded the duty of the Clerk of the House of Representatives, under the usages of late years, to be a limited and a very plain one; and that whatever doubts or difficulties might now hang over the question were occasioned by what seemed to him to be a departure from the line of usage. What did the House understand from the Clerk? Why, that there was a contest. The worthy member from Vermont (Mr. Slade) had said, if there was a color of a claim, the Clerk was justified in acting. According to that, then, it was the duty of the Clerk to take colors of claims, and, if he found them, to do—what? To keep out of his seat the person who offered himself as a Representative of a State, however clear his case might be. The gentleman said that the Clerk was competent to decide—upon what? The color of a claim! However slight it might be, however sure he might be that there was nothing in it, was the Clerk to suffer that color of a claim to interpose between the Representative and his seat, even for a single instant? Take, for example, the State of Delaware, which has only one Representative. Was he to be kept out of his seat by a color of a claim? No—he (Mr. S.) did not understand the duty of the Clerk to be such. He took it that the usage under which the Clerk performed the duty which he was now performing was applicable only to one single point, and that was, to the verification of the credentials in point of genuineness and form.

Mr. S., after speaking of what he considered the becoming delicacy with which the Clerk had acted, proceeded to say, what is it that the Clerk does? He keeps out of their seats the Delegates from the State of New Jersey, although it may appear hereafter—although it may appear now—that they are entitled to their seats, because, according to this doctrine, if there is a color of a claim, they are to pass the matter over to some other period. Whether that period may be until after the House has organized, or to what other period, I know not.

In order to arrive at a proper conclusion as to the genuineness and force of the credentials, the Clerk is bound to know the laws of the several States in relation to this matter. He is bound to look into those laws, and to see that the certificates are conformable to them; and, if they are so, his authority is at an end. Here are five gentlemen who present their commissions as Representatives from N. Jersey. Have those commissions come through the regular channel? Does any man entertain a doubt? Is there any defect in the law of New Jersey? We have a right to have it read. I know what it is, and I now aver that, word for word, letter for letter, and syllable for syllable, the certificate which these five gentlemen have brought with them, signed by the Governor of the State of New Jersey, is precisely that which, by the law of that State, is declared to be final and conclusive evidence of their election. Is there any thing from the Governor of New Jersey to say that there has been a mistake? Is there doubt as to the genuineness of the signature, or the seal, or the paper? Does the Clerk himself entertain such a doubt? Probably he does, but if he does, he has not yet said so. He has said that there is a contest on which he does not undertake to decide; but *how* he would decide, if he were competent, to do so, he has not said. I repeat, we are not even informed that there is any doubt; and if it were not for this claim, or color of a claim, the certificate would be sufficient.

How then do we stand? What is the position of the question? Why, that these gentlemen are in this House, bringing with them their certificates drawn up according to the laws of the State of New Jersey, even to the letter, and that they are, therefore, under the Constitution of the United States, to hold their seats, unless it is shown how they are to be displaced. Is it not due to a sovereign State that its solemn act, done according to law, and involving an act of Executive power, should, in the first instance, be treated with respect: that those who intend to impeach it should not come with a transient color of claim, but should show that that which appears to be according to law is not according to law? What have you got on the part of the gentlemen contesting? A certificate from the Secretary of State of the Commonwealth of New Jersey. It is a remarkable thing, but if you will look through the law, you will find that there is not a single function which the Secretary of State has to perform. I do not know that he has even the custody of the papers. By turning to the law, it will be found that the Governor of New Jersey, on the returns being made to him, is to summon the Council. The person who has the custody of the papers belonging to the Council is the person who has the charge of all the papers, and I take it for granted, therefore, that they are now in the possession of the Governor and Council, or of their clerk, if they have one. Is there any thing from the Clerk to the Council? No.

This question becomes a very serious one; because, as I indicated at the outset of my remarks, the doings of this day are, more or less, to serve as a direction to those who come after us—and I say that this is the first time that any Clerk in the Congress of the United States has ever challenged the principle that, under the Constitution of the United States, the man who holds the return is entitled to a seat. I have looked through the decision given in the case of Moore and Letcher. It was there argued by many distinguished members, and among others, by the gentleman formerly Speaker of this House, and now the Governor of the State of Tennessee, who brought forward precedent in support of his opinion. He argued conclusively and triumphantly that you cannot go behind or beyond the return commission—beyond the authority which comes to you from the State. Those who argued on the same side of the question took the same ground. What did the opponents do? Did they question this principle, this unavoidable principle? for such it is in a Government like ours, which consists of independent States, each entitled to act exclusively and conclusively until Congress shall have power to act. The opponents to a man agreed to the principle: all that was contended for was, whether the certificate was in conformity with the law of Kentucky—one side saying it was, and the other that it was not—but both agreeing that if it was, he who had it was entitled to his seat. We can come, therefore, now only to one conclusion, so far as we know at present: namely, that these gentlemen are delegates from the State of New Jersey. If their seats are liable to be contested, we know how that is to be done according to the law of the United States. In the mean time, however, the gentlemen should take their seats, and have a right so to do. That, then, which appears wrong to me is, that the Clerk should raise a question which he is not competent to raise—a question which this House, in the case of Letcher and Moore, decided that it must itself settle.

I submit, therefore, that unless something is brought forward to impeach the genuineness of the commission which these gentlemen have produced, they are entitled to their seats, and should take them accordingly.

The Clerk having, at the request of Mr. Randolph, stated the order of the questions pending,

Mr. Randolph proceeded to say, that the first thing, in his opinion, to be done, was to read the law, and afterwards the certificates of the other gentlemen claiming. This, he hoped, would be done. A discussion could not be avoided; and, if it must come, let the House at least have the law before it.

He wished to say a word in reply to the position taken by the gentleman from Vermont, (Mr. Slade,) who had said that the Clerk could put no questions. In this Mr. R. differed. The Clerk could and must put questions. Mr. R. was proceeding, when

Mr. Slade explained: He had not intended to say, that when the Clerk had called the names of all the members whose names are not contested, the House should then proceed to organize; but that it should then proceed, before organization, to act upon the question of the contested seats, so far as to decide who are *prima facie* entitled to such seats.

Mr. Randolph said he had misunderstood the gentleman. All that he wished was that the law might be read, and that then the certificates of those who contested the seats of his colleagues might also be read. There would then be something before the House.

Mr. Bynum rose to reply to certain statements which had been made for facts, but which were not so. He knew it to be the practice with many, in and out of this House, to assume for a fact every thing which they thought proper. The gentleman from Pennsylvania, (Mr. Sergeant,) with whom it was characteristic, had assumed for a fact that this was the first time that ever the seat of a member had been questioned who had been elected according to the laws and the Constitution. Did the gentleman undertake to say, that he alone had the right to judge of what was the law and the Constitution in relation to this subject. If the law and the Constitution were so clear as the gentleman would make out, he (Mr. Bynum) presumed that there would not be a dissenting voice as to these gentlemen taking their seats. But this was precisely the fact at issue. He said that these individuals were not elected according to the law and the facts. The gentleman from Pennsylvania said they were—that it was a clear case; but it was to be borne in mind that there were other gentlemen in this House who had an equal right to their own opinions, and to the exercise of their own powers of construction of the laws and the Constitution, who saw the matter in a very different light. The gentleman thought, too, that it would be a reflection on the Governor of New Jersey, that it would be disrespectful to the State of New Jersey, to question the right of these individuals to their seats, or to doubt the propriety of their names being called. Were there not others whose interests and opinions were to be respected besides the Governor and his coadjutors in New Jersey? He (Mr. B.) thought that the sovereign people of New Jersey should be heard, and that their rights also should be respected on this floor. If he understood the matter correctly, the members of this House were not so much the Representatives of the Executive of the State of New Jersey; they are emphatically the Representatives in part of the great sovereign People of N. Jersey. Here was a contest between the People and the Executive of N. Jersey. The People called upon this House to do justice; they say that the Governor had committed an outrage upon their feelings and rights; that he had been guilty of a usurpation—a usurpation for which in some countries he would be subject to high responsibility. If the object of gentlemen was to get the names of these five individuals called while the House was yet in an unorganized condition, what was to prevent the names of the other five being called? The Governor of New Jersey had ordered his Representatives to be called, and he was to be heard; but the People of New Jersey had ordered their Representatives to be called, they were not to be heard. This was a matter in which the rights of the People were at stake.

He considered all the propositions which had been contended for by the gentlemen on the other side as impracticable. Nothing could be done in the matter until the House had adopted the proposition of the gentleman from Virginia, (Mr. Rives.) Before a decision could be had, it would be necessary to take into consideration the law of the State of N. Jersey, but that could not be done now, because this was not an organized body. Here was the sacred chart that guided us (pointing to the Constitution of the United States.) But, in deciding this matter, the facts as well as the law must be considered. "Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business," (reading.) The House must be the judge of the rights of its own members.—Was there any law to contravene this provision?—If the Governor of New Jersey dared to contravene the rights of members of this House, let his acts meet with the contempt they merit. He (Mr. B.) had been told that this debate had been got up here as a mere catch, to pre-occupy public attention; and he doubted whether the Executive of New Jersey had even acted in conformity with the law of his own State. A majority of the people of his State thought that he had not. The Constitution, then, gave this House the power to take the matter entirely into its own hands. But what was first to be done? The House must be organized.—The gentleman from Pennsylvania had contended that now was the time to take this matter into consideration. How? By whom? Not a step could be taken until there was some organization. Mr. B. then proceeded to vindicate the course which the Clerk had taken. A brief intermediate explanatory conversation ensued between Messrs. Bynum, Slade, and Mercer, on other points, and Mr. Bynum concluded his remarks by reading an extract from the journals in the case of Moore and Letcher, and which he cited in support of his own opinions.

Mr. Galbraith expressed views corresponding with those taken by Mr. Slade. He contended that the rule by which New Jersey was called in her present place was simply a geographical one, and that no inconvenience could result from passing her over until the House had organized. The Clerk had acted upon the principle that he was not to decide who were members, and in that position Mr. G. sustained him.

Mr. G. then took occasion to advert to a statement which had been published in certain newspapers, which represented him as having made use of language at a meeting in his own district on the subject of this contested election, and which language (he said) had been totally perverted.

Mr. Everett said the House seemed to him to be under great embarrassment, and he hardly knew how to get out of it. It would be very unfortunate for the House and the country if they should remain in this unorganized condition. He desired that there should be as speedy an organization as possible.

The Clerk took his seat under what was called the law of Parliament. It was true that, by a rule of this House, not now obligatory, the Clerk remained so until a successor was appointed. He took his seat, and whatever act he did, he did under the law of Parliament. The usage had been that the House should take the initiatory steps to produce an organization. No one could doubt that this House had the power of its own organization. It could not be without the power to produce a perfect organization. The course had been for the Clerk to make a roll, and, by the law of Parliament from the beginning of the Government to this day, only one question was submitted to the Clerk, and that was a question of necessity; the question of the returns was submitted to him, but nothing else. He made out his roll from such evidence as was exhibited; that was the only question submitted to him: and before he could be justified in not entering some person on the roll, he must be satisfied that there had not been a legal election. The question is, whether the return, on the face of it, is a legal one? Had the Clerk intimated any doubt on this point? Not at all. Until he has done this, his (Mr. Everett's) opinion was that there was no question before