* * * There can be no appeal on a point of order in a joint convention of the two Houses for the reason that the Senate, representing the States, and the House of Representatives representing the people of the United States, the convention is made up of different persons, each body representing the same number of people, but by different numbers and in different ways.

Finally, on February 12,[1] the subject was laid on the table, yeas 130, nays 55.

In the Senate, on February 11,[2] Mr. Garrett Davis, of Kentucky, proposed in the Senate a concurrent resolution censuring Mr. Butler, but it does not seem to have been acted on.

1951. Proceedings of the electoral count of 1873.

When an objection is raised to the counting of the electoral vote of a State in the joint meeting, two copies are made of the objection, one for use of the House and the other for the Senate.

During the electoral count of 1873 the joint meeting made, by unanimous consent, orders relating to the reading of the certificates and the consideration of objections.

During the electoral count of 1873 the objection to the vote of Georgia was, by unanimous consent, reserved until objection was made to the vote of Mississippi, when the Houses separated and considered the two.

When, during the electoral count of 1873, the two Houses separated to consider objections, the Vice-President, who had custody of the documents, left with the House duplicates of the electoral certificates.

The former joint rule providing for the electoral count. (Footnote.)

In a message in 1865 the President of the United States disclaimed all right of interfering with the canvassing or counting of the electoral votes. (Footnote.)

On February 12, 1873,[3] the House directed its Clerk to inform the Senate that it was ready to receive that body for the purpose of proceeding to open and count the electoral votes. This was the last count to take place under the twenty-second joint rule.[4] The formalities of assembling being over, by unanimous consent of

[1] Journal, p. 335; Globe, p. 1148.

[2] Globe, p. 1069.

[3] Third session Forty-second Congress, Journal, p. 374; Globe, p. 1294.

[4] The twenty-second joint rule provided: "The two Houses shall assemble in the Hall of the House of Representatives at the hour of 1 o'clock p. m., on the second Wednesday in February next succeeding the meeting of the electors of President and Vice-President of the United States, and the President of the Senate shall be the presiding officer; one teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes; and said tellers, having read the same in the presence and hearing of the two Houses thus assembled, shall make a list of the votes as they shall appear from the said certificates; and the votes having been counted the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

"If, upon the reading of any such certificate by the tellers, any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such question to the House of

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

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

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

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

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

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

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

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

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

[1] Globe, p. 1296.

[2] Globe, pp. 1296, 1297.

[3] Schuyler Colfax, of Indiana, Vice-President.

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

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

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

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

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

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

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

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

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

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

The Vice-President said:

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

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[1] Globe, p. 1299.

[2] Globe, p. 1300.

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

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

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

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

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

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

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[1] Journal, p. 384; Globe, p. 1306.