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THE GREAT FRAUD

Upon the Voters of Bedford, Fulton and Somerset Counties

Debate at the Organization of the House.

The Clerk. (Ab.) I have before me the returns from the counties of Somerset, Bedford and Fulton. There are two papers which I will read:

"We, the undersigned return judges of the counties of Somerset, Bedford and Fulton, in the State of Pennsylvania, said counties composing, under the act of Assembly entitled 'An act to fix the number of Senators and Representatives, and to form the State into districts,' &c., approved the 5th day of May, A. D. 1864, a Representative district, and entitled, under said act, to elect two members of the House of Representatives of the said Commonwealth of Pennsylvania, having met at the Court House, in the borough of Bedford, in the said county of Bedford, and having cast up the several county returns of the said counties of Somerset, Bedford and Fulton, *do certify:* That, at the general election held on the second Tuesday, 11th day of October, A. D. 1864, the following named persons had respectively, including the soldiers' vote, the number of votes hereinafter set forth, for members of the House of Representatives of said Commonwealth of Pennsylvania, viz:

"David B. Armstrong had five thousand and nine votes (5,009.)

"Moses A. Ross had five thousand votes (5,000.)

"Hiram Findlay had four thousand nine hundred and six votes (4,906.)

"Benjamin F. Meyers had four thousand eight hundred and seventy-three votes (4,873.)

"And that Moses A. Ross and David B. Armstrong, having a majority of the votes cast in said counties, including the soldiers' vote, are duly elected members of the House of Representatives of the said Commonwealth of Pennsylvania.

"In witness whereof we have hereunto set our hands and seals, this Friday, the fourth day of November, A. D. 1864, being the Friday following the third Friday after said general election.

"M. D. Miller, of Somerset county. [L. S.]
[L. S.]
[L. S.]

"Attest:—S. L. Russell.

"James Lynch, the return judge of Fulton county, and Joseph W. Elder, the return judge of Bedford county, refuse to sign the above, because, as they allege, the certificate of the soldiers' vote in Bedford county, produced by said Elder, was not signed by all the return judges of said county who were present at the meeting on the 28th of October.

M. D. MILLER."

The second paper is as follows:

"To the Hon. Eli Slifer, Secretary of the Commonwealth:

"The undersigned return judges of the Representative district composed of the counties of Somerset, Bedford and Fulton, appointed at a meeting of the return judges of their respective counties, held on Friday, October 28th, A. D. 1864, for the purpose of casting up their several county returns for the office of Representative in the State Legislature for the district composed as aforesaid, hereby certify that they met in the borough of Bedford, on Friday, November 4th, A. D. 1864, and, pursuant to the act of Assembly in such case made and provided, did cast up the returns of the votes cast in their respective counties at the election held on the second Tuesday of October, (being the 11th day,) A. D. 1864, for the offices aforesaid, and that

"B. F. Meyers received forty-seven hundred and ninety-five votes (4,795.)

"Hiram Findlay received forty-eight hundred and five votes (4,805.)

"David B. Armstrong received forty-seven hundred and twenty-four votes (4,724.)

"Moses A. Ross received forty-seven hundred and fifty-four votes (4,754.)

"And that B. F. Meyers and Hiram Findlay, having received respectively the highest number of votes cast in said district for said offices, are duly elected Representatives in the Legislature of Pennsylvania, for the year one thousand eight hundred and sixty-five.

"Witness our hands and seals, this 4th day of November, A. D. 1864.

"JOSEPH W. ELDER, [L. S.]
Return Judge for Bedford county.
"JAMES LYNCH, [L. S.]
Return Judge for Fulton county.
[L. S.]
Return Judge for Somerset county.

"Attest:—John G. Fisher, Clerk."

The only adjudicated case that I know of where the like state of affairs has ever been presented for a decision, was when the Court of Quarter Sessions (I think) of Philadelphia, had before it the case of Sheriff Ewings' securities. The court in that case held that return judges had no right to make two returns—that the two papers were but one return, and that it was the duty of the party to whom such returns were presented for adjudication to compare them together and make but one of them.

The Clerk of this House stands somewhat in the position of the Master of Rolls in Parliament. It is his duty to make a roll of this House; and while I do not surrender what I believe to be my duty in this case, I have also the right, which I purpose to exercise here, of asking the instruction of the House as to which of the names upon these two papers shall be put upon the rolls of the House.

Mr. BROWN. (Ab.) Mr. Clerk, I do not exactly like the position in which the clerk proposes to put this case. It occurs to me that the submission of the question to the House, is wrong in theory and wrong in principle, and that it will inevitably be wrong and pernicious in practice. As suggested by the clerk himself, the clerk of the House stands in the position of Master of Rolls. It is his duty to attend to the preliminary organization of the House—to act to some extent in the capacity of Speaker of the House, after twelve o'clock to-day, when the gavel of the clerk fell, and the term of the former Speaker expired.

Now, an extreme case will illustrate a principle. Suppose that instead of two members, a majority of the members of this House stood here in the same position as the gentlemen from Somerset, Bedford and Fulton, would it be said that the clerk should take the direction of the balance of the House—less than a quorum—as to what he should do? Government can never die! Like the king it is perpetual; and it must be perpetual in all its departments. It must be perpetual in this department. There must be a governing power somewhere to determine who are the members before there can be a formal organization of the House.

Now, sir, entertaining these views, and of course without any intention to reflect upon the clerk of the House, (because this is a new question,) I offer the following resolution:

Resolved, That the chief clerk be directed to discharge his duty by entering upon the roll of the House of Representatives the names of the two gentlemen from the legislative district composed of the counties of Somerset, Bedford and Fulton, who, according to the papers in his hands, appear to have the highest number of votes.

That is the principle of free suffrage.

Mr. PERSHING. (Dem.) Mr. Clerk, it seems to me that if precedents are worth anything at all in this body this question is clear of difficulty. I do not agree with the gentleman from Warren (Mr. Brown) as to the powers vested in the clerk of the last House. If it is the duty of the former clerk of the House to make out a roll, and the making out of that roll is conclusive as to the *prima facie* right of members to their seats, he will have the power to bring into this body a majority of men who were never elected—who, under the Constitution and laws of the State, would have no right whatever to occupy seats on this floor; whilst the gentlemen who had received a majority of the votes in their districts would be left to contest the seats of those who are foisted in by the clerk, and perhaps by the time that the rightful members would be admitted all the important legislation of the session would be transacted.

Now, I have always understood that it is a mere matter of custom by which the clerk presides at the opening of the session, and until the Speaker has been elected. In many Legislatures of this Union a temporary chairman is elected to preside until the organization of the House is completed. Our custom has been different. The clerk usually presides and reads the returns as they are presented to him by the Secretary of the Commonwealth. The House then proceeds to the election of Speaker and subsequently of clerk, because as this House is constituted it has no Speaker or Clerk.

At the outset of my remarks, I said that if we are to be guided by precedents, this whole question is clear of difficulty. From the papers upon your desk, it appears that two gentlemen present have the certificate of a majority of the return judges of that legislative district—that they are the legally elected members of this House. Two other gentlemen present certificates signed by one return judge of that district. Now, whatever may be the grounds upon which the admission of the gentlemen who have the certificate of the majority of the return judges may be objected to, under the Constitution of the State and the laws regulating this whole matter, those gentlemen have a *prima facie* right to seats upon this floor. The Attorney General of the Commonwealth has decided, I believe, that a majority of the return judges are competent to decide this whole matter, and that their action is conclusive as to the *prima facie* right of members to their seats.—That, sir, has been the uniform practice in Pennsylvania. If there has ever been an instance in which it has been departed from, (except one,) I am not aware of it. I believe that by the action of this House, three years ago, gentlemen were admitted to seats upon this floor, upon the certificate of a minority of the return judges. I then protested against that action, as I now protest against this, as being revolutionary in its nature.

Now, provision is made under the Constitution, by which all these contested questions are to be settled, and the law has provided a way in which every possible allegation as to the right of a member to his seat can be properly settled. I take it, sir, that the gentlemen who present certificates from a majority of the return judges—those return judges having discharged their duties under the obligations imposed upon them by the laws, they being the tribunal to determine in the first place who had a right to their certificate—the gentlemen, I say, presenting certificates of that kind have a right to their seats on this floor. The gentlemen who come here with a minority certificate, must proceed to show this House, in the way appointed by the Constitution and the laws, that they are entitled to seats. But we cannot, in this preliminary proceeding, go into an investigation connected with this election. The returns of the majority must, in the first instance, be conclusive.

Mr. BROWN. Mr. Clerk, I rise for the purpose of making an alteration in the resolution which I offered. I would strike out the words "discharge his duty by entering," and make it read as follows:

Resolved, That the Clerk be instructed to enter upon the rolls of the House of Representatives the names of the two gentlemen from the Legislative district composed of the counties of Somerset, Bedford and Fulton, who, according to the papers in his hands, appear to have the highest number of votes.

Mr. GUERNSEY. [Ab.] Mr. Clerk, I move to amend the resolution by substituting the word "returns" for the word "papers."

Mr. PERSHING. Mr. Clerk, I move to amend the amendment by striking out all after the word "who" and inserting the words "according to the certificate signed by a majority of the return judges are certified to be elected members of this House." The resolution of the gentleman from Warren (Mr. Brown) takes for granted the whole question in controversy. We cannot determine the majority of the votes.

Mr. SHARPE. (Dem.) I do not propose Mr. Clerk, to discuss the merits of this question. It appears to me that the question as to which of the gentlemen are legally elected to represent the district comprising the counties of Bedford, Somerset and Fulton is not properly before the House. The simple question to be decided by the House is which of these gentlemen present to this House *prima facie* evidence of election.

The resolution as originally introduced by the gentleman from Warran instructs the Clerks of this House to put upon the roll the names of the gentlemen who appear, by the papers in their possession, to have received the highest number of votes. That resolution, in my apprehension, does not meet the difficulty in this case, because he can easily ascertain who has the highest number of votes from the papers that are legally certified as to the number of votes cast in that district. Now, there are two papers presented to the Clerk, one of which is sent by one of the return judges, the other by two of the return judges of that district. Is there any gentleman upon either side of the chamber who will pretend to assert that the return sent by the minority is any return at all? They know it to be true that a report returned by a minority of return judges is no report at all. If that be the character of one of the papers that is in possession of the Clerk, and if that paper is not illegal, how is it to be ascertained by the papers in the possession of the Clerk which of these gentlemen have received the highest number of votes? The only proper legal evidence in the possession of the Clerk as to the result of the election in this district, is the paper sent by the majority. It is the only paper properly in the possession of the Clerk. It is the only paper that law looks at, and therefore the only paper that this House can look at. The Attorney General of this Commonwealth decided, the other day, that the action of the majority of the return judges, where two or more counties are comprised in the same district, constitutes the proper legal evidence as to the result of the election in that district and that the report of the minority is no evidence at all as to anything that appears on the face of the paper. Then the resolution of the gentleman from Warren is a case of *petitio principii*—in this case, because the paper that he desires the Clerk to base his judgment upon in this case is a paper having no legal existence at all, for the Clerk is to make up his return as to which of the gentlemen have a majority of votes, and he is to be informed on this point only by the paper in his possession from the majority of return judges in that district. Then, sir, I think that the resolution introduced by the gentleman from Cambria is the only proper resolution that will meet this case. It is not a resolution that looks into the merits of this controversy at all, but a resolution which contemplates what has been done in cases similar to this, in putting on the roll the names of those who came here with *prima facie* evidence. The resolution of the gentleman from Warren looks behind the legal certificate, and I think no gentleman in this body will stultify himself by saying that the certificate signed by the minority of judges is the legal certificate. That resolution attempts to decide this question upon that which it presumes to be the merits of the case, in opposition to the Constitution of this Commonwealth, which declares that the question can only be inquired into by a committee appointed by this body.

I shall vote for the resolution of the gentleman from Cambria because it is in accordance with a similar case and with the Constitution and laws of the Commonwealth.

Mr. M'CLURE. (Ab.) Mr. Clerk, we are about to establish a most important precedent; and it becomes us to do so with due deliberation, because I believe there has never been before this House a case that is in all respects similar, or even approximating to this case in its most important features. It has been held, sir, by our judicial tribunals, that several returns constitute but one return. There are, therefore, no papers (as this resolution seems to assert) before the House or before the Clerk. There is simply a return made by the return judges of this legislative district. It is true, the judges do not agree in this return, but nevertheless, the papers before us all constitute one return, and upon that return the House must judge who shall *prima facie* be sworn in as members.

Now, sir, I desire to look at the question a moment, because we are about to determine a precedent which shall hereafter operate alike upon all parties. The power to arrest frauds in the returns must lodge somewhere. The gentleman from Cambria (Mr. PERSHING) declares against the right of the clerk to assume that he shall judge or exercise any power in fixing the rolls of this House. Therefore, if return judges violate their oaths and the laws, and certify men as elected who are not elected—as has been done in this case by the majority of these judges as the return upon its face shows*—then, according to the doctrine of the gentleman from Cambria, there is no recourse whatever. This House has no power except through its clerk; and therefore it must accept this fraud and take all the consequences. I beg to call the attention of the gentleman from Cambria (Mr. PERSHING) to the fact that he is here assuming most perilous ground. If there is no power in this House to guard against such frauds of return judges, we simply open wide the doors and invite every return judge in the State, who shall be venial or corrupt, to thrust members into this House regardless of the votes of the people.

I grant, sir, that there is danger in lodging this power anywhere, but it must rest somewhere. In the history of this State it has never been determined where that power shall rest. By courtesy or usage it has rested with the clerk, because there has been no such contest as this to raise the question and fix a precedent. I insist that the House in this case, shall determine; first, that the power shall not be in corrupt return judges, but that it shall be as nearly as possible in the House. The House has some power over its own clerk. It may instruct the clerk. He perhaps, may not feel bound by such instructions, but I rather think the majority of clerks would. If not from convictions of duty, certainly from courtesy the clerk should adhere to the instructions of the House, and especially in a case of this kind, where there are but two members in dispute.

The case supposed by the gentleman from Cambria (Mr. PERSHING) is one not likely to occur, unless his doctrine prevails—that a majority of the members of this House may be ruled out and placed in the position of the gentlemen from Somerset, Bedford and Fulton. If his doctrine should be accepted as the doctrine of this House and the law of the State, and return judges be thus invited to return members as elected, regardless of the vote of the people, and according to their own political proclivities, then his apprehensions might be realized, and next year we should probably have the seats of fifty men contested. But that is not likely if this House shall exercise a wise, just and equitable supervision over its own clerk and its own rules. Therefore, after carefully deliberating upon this question, and regarding well the sacredness of a precedent which must hereafter tell upon all parties, I believe that the power must be taken from the judges, so far as the action of this House is concerned, and vested in the Clerk, so far as it must be vested in any clerk.

Now, sir, when this is done what is the duty of this House? The Clerk does not choose to decide this question and properly submits it to the House for instruction. We do not propose (as the gentleman from Franklin, my colleague, suggests) to examine into the merits of this question, and he is equally in error when he assumes that the Attorney General has determined any such question at all. So far as he has reached this case, he has simply expressed his opinion that there has been a monstrous fraud perpetrated by return judges in violation of their oaths, in seeking to subvert the fairly and constitutionally expressed will of the people. He has decided that the Governor, in the exercise of a purely ministerial duty, (for he cannot reach the merits of the case,) must be bound by the record. He cannot inquire at all into the legality of any vote, nor can he inquire whether the return judges have rejected a part of the vote. As a ministerial officer he is bound to accept that which, upon its face, is a legal return, and upon that he must issue his proclamation. But this House is not governed by such rules. We are exercising no ministerial duty. We are here to decide, as nearly as we can, a doubtful question. And we have the right to reach the merits of the case, so far as the returns before us present it. We have primarily no right to assume that any part of these returns is legal or illegal, but we have the right to go to the record itself to discover who have, by the record, received a majority. That record clearly shows that Messrs. Ross and Armstrong have received a majority of the votes polled. There is the record before us—a part of the return itself. Without determining, in this primary hearing, whether that vote is legal or illegal, we are simply to determine that those gentlemen are entitled to be called, and I shall vote to instruct the Clerk accordingly.

I am well aware that gentlemen will insist that this is reaching the merits of the question. It is not at all reaching the merits of the question. I am simply seeking to guard against a deliberate, and what I must pronounce, a monstrous fraud upon this House and upon the people of a certain legislative district; and so far as this House is able, without seeking to contravene right or law, it ought to interpose boldly, and say that these things shall not be done.—Because, if they are done in this case, they may be repeated next year in forty cases, and we shall then, by this act of tolerating fraud, bring revolution upon our Legislature. It is not we who seek to revolutionize: those seeking to sanction fraud upon technical grounds, are those who seek to revolutionize this Legislature.

Why, sir, there is not a man who has addressed this House—neither my colleague from Franklin, (Mr. Sharpe,) nor the gentleman from Cambria, (Mr. Pershing,)—who will pretend to say that the return made by the single judge from Somerset is not the true return from that district. They cannot pretend to say to this House that the Democratic candidates for the Legislature in that district, even by the return of their own county judges, had a majority of the votes cast. Their own judges counted them out; their own judges certified the return that counted them out. The return judges of Fulton county unanimously signed the return. All the return judges of Bedford county, except six, signed the returns. And the returns signed by every judge who is in harmony with the gentlemen on the other side of the House count their own members out by over one hundred majority.

The facts touching this question are facts of record. Bear in mind that it is not pretended that these men are elected; it is simply claimed by technicality, having its origin in fraud. I grant, sir, that if all the judges had made this return, and the House had no other evidence, we should be bound to call and swear in the men whose names might be on the return. But, fortunately, that is not the case here. We have, by the very record before us, conclusive evidence that they are seeking to perpetrate a fraud upon this House; and, therefore, I shall vote so to instruct the Clerk that this fraud shall not succeed—that this House shall not sanction, directly or indirectly, any such fraud. Without reaching the merits of the contest in any way, judging this question as a precedent most solemn in its nature, judging it solely by the facts which the record raises for our consideration, judging it by the return (which is the proper word, instead of "papers,") this House is bound by law and bound by equity to say that the men who, by the returns, have a clear majority of the vote of the district, shall be called and shall be sworn.

Mr. PERSHING. Mr. Clerk, I do not want to protract this discussion; but this is the first time that I have ever heard it said that gentlemen who come here, complying with all the requisitions of the law—presenting a certificate signed by a majority of the district, are perpetrating a fraud upon the House. It seems, sir, that the gentleman from Franklin (Mr. M'Clure) occupies a much more "perilous" position in regard to this question than I. We are not yet in a position to investigate this question of fraud; and he has made a matter of allegation what must necessarily be a matter for investigation. Allegation is not to govern here, but law and precedent are to govern in the determination of this question. I agree with him that this is a matter of very great importance. We ought now to establish a precedent, or rather we ought not to violate all the precedents of the past.

Now, what is the position? Why, that one return judge, refusing to sign the return made by his colleagues whether they be three or a dozen, has a right to send his return here, and that the return of that one judge is to be taken in preference to the return of all the other judges associated with him. That is simply the position of the gentleman from Franklin (Mr. M'Clure.) The first, he says, shows that Messrs. Meyers and Findlay were not elected. The second, the only legal return here, shows that they were elected. And the question, as he presents it, is simply this: Whether a minority shall have more power in the discharge of their duties than a majority. We are not to impute perjury to these men. The two gentlemen who signed the certificate returning Messrs. Meyers and Findlay are equally responsible and respectable with the other judge. They come here with just as high a reputation and with just as much evidence that they have discharged their duty, as do the other gentlemen. It is the gentleman from Franklin who occupies the "perilous" position, whilst I follow all the precedents and the letter of the law itself.

But, he says there is no remedy! Certainly there is a remedy. If these return judges against whom he makes these serious charges are guilty of the offence, the law provides for their punishment. If through their corrupt agency, as he alleges, men are brought upon this floor who have no right to seats, the law has provided a way for their expulsion. I am for following the law—following the precedents as they are now laid down. Let us have an investigation; let the guilty be punished, but let us not act upon a mere matter of allegation. The very case which the gentleman alleges is thus provided for:

"Every petition, as aforesaid, complaining of an undue election or a false return of a member of the House of Representatives, shall be delivered," &c.

There is the remedy provided; and we are not left in the situation which the gentleman from Franklin (Mr. McClure) imagines when we follow law and precedent and the clerk adopts a uniform practice. The only question is whether we shall follow the beaten path and make a new precedent which may hereafter occasion very great mischief—by which one of the return judges may modify the act of a dozen.

Mr. SHARPE. Mr. Clerk, in the remarks which I previously made, I carefully avoided any accusation of fraud in this matter: but my colleague from Franklin (Mr. McClure) has stated in broad terms that the record before this House shows that Mr. Ross and Mr. Armstrong had a majority of the votes in that district.—Now, my colleague from Franklin says that the record proves that fact. If I understand the papers in the possession of the clerk, there are two different returns, one of which shows that Meyers and Findlay have a majority, and the other that Ross and Armstrong have a majority. The question is which of these papers is the record in this case? And that brings up another question—what is necessary to constitute a record in this case? Does my colleague from Franklin pretend to say that a minority of the return judges can make a record? Does he pretend to stultify himself by saying that a minority of the return judges of a district can override a majority? If he takes that position, he overrules a decision which the Attorney General of the Commonwealth made in a case arising in this very district, and with which he is just as familiar as I am. In that decision, although Mr. Koontz, the Republican candidate for Congress, had his certificate signed by a minority of the judges of that district, the Attorney General declared that that was no certificate at all—that it was no evidence of anything that was set forth upon its face.

Now, sir, apply that doctrine to this case—to the case of the returns signed by the single judge—and I ask the gentleman from Franklin, (McClure,) and I ask every member upon that side of the chamber, is that a record that this House is to be governed by? Can one man make a record which contradicts the record made by the only parties that the law recognizes as having the right to make the record as to election in that district? Does he pretend to say that one man can make a record in opposition to the record made by a majority of his colleagues, when qualified in law to make a record? Then, if he cannot make a record which contradicts the record of his colleagues, there is but one record in possession of the clerk, and that shows that Meyers and Findlay have received a majority of the votes in the district.

I did not intend to enter into the question of fraud, but I dislike the allegation of fraud coming from my colleague at this early stage of the investigation. There is no evidence of fraud before the House. The charge of fraud rests upon the naked allegation of my colleague, unsustained by a single scintilla of evidence, because the only record in the possession of the House shows that Messrs. Meyers and Findlay are the legal members of this House. The whole difficulty arose from a "troubler in Israel" interfering with the proper discharge of the duties of the return judges of Bedford county. As my colleague from Franklin well knows, the judges were proceeding to perform their duties properly when a third party chose to step in and dictate as to a certain kind of performance of duty which ought to govern a certain part of the return judges, and there was the commencement of this whole difficulty. But that is a question which ought to be investigated before a committee, and not in this House. The only question, as I apprehend, before this House, is which of these papers is the record? I say that the paper signed by a majority of the return judges is the record and the only record. That record shows that Messrs. Ross and Armstrong are not elected; but that Messrs. Meyers and Findlay are elected.

Mr. M'CLURE. Mr. Clerk, my colleague from Franklin, (Mr. Sharpe), and the gentleman from Cambria, (Mr. Pershing,) are both quite mistaken in assuming that I have asked this House to receive the certificate of a single return judge as the return. I have not done so, and allow me at the outset simply to state that the remedy proposed by the gentleman from Cambria, (Mr. Pershing,) in the case of alleged frauds or false return of votes, does not help us here. *There is no false return before this House.* I hold and stated as distinctly as the English language could make it, that the return made by the judge for Somerset county is a *part* of this return. A conflict is thus presented upon the face of this return, and therefore is not the false return contemplated in the act of Assembly. If all the judges from the three counties of this district had signed the same return, declaring the votes wrongfully, that would be a false return and the House would be bound to accept it. But this case is most essentially different. The inquiry is presented upon the face of the return itself wherein is it right and wherein is it wrong. The gentleman from Cambria, and every gentleman in this House who knows anything about it, knows that the return made by the single judge is correct.—Bear in mind that they do not assume to contradict the statement made by this single return judge; they carefully avoid saying anything of that sort.

Mr. HAKES. (Dem.) Mr. Clerk, the moment we attempt to discuss this question upon its merits, we shall have to consider the whole case or make such suggestions as are entirely incompatible with our duties—such as this allegation of fraud. Now, we are not to allege fraud; we are not to suppose any fraud; we have no legal evidence before us what the facts are. This House, as a body, cannot decide this question upon its merits; neither can the clerk decide it upon its merits. I speak now of the *legal* merits, the merits which the law requires to give a man a permanent seat. That can only be done by a committee of the House selected for that special purpose, with a special oath administered, and having the power to send for persons and papers, and collect all the evidence. Acting here upon our general oath, we cannot decide it. We are not permitted to do so. The law has appointed other ways in which this must be done.

Neither is it necessary to decide this case upon its merits. This is simply a preliminary organization, and it canntot be decided now who are entitled to seats under the returns of the return judges. Now, in the absence of any legal evidence which the law requires to decide the matter permanently, we must take the evidence before us. What is that? Why, the evidence that a majority of return judges have certified that Messrs. Meyers and Findlay are entitled to seats. That evidence is entirely competent for the clerk to act upon. And it may be doubted whether the House has anything to say about it; whether it is not a matter of duty for the clerk to act upon the evidence, in this case, as he does in every other case where he enrolls a member, and to decide whose names are to be enrolled upon the rolls. I do not know that the gentleman from Franklin upon my right, (Mr. M'Clure) had a competitor. But, suppose he had; suppose some person had the audacity to run against him, as they do against other gentlemen, and that a majority of return judges had certified that he was entitled to his seat. I want to know if he would willingly give up that seat in the preliminary organization when a single return judge certified that he was not entitled to his seat. Why, sir, we may all tremble if it be established here that in our preliminary organization a single return judge may, in the face of a majority, oust a man from his seat. We cannot tell who shall be safe. No, sir, no one will pretend that a minority of return judges from any district can give such a certificate as will entitle any member to his seat here in the preliminary organization. It is absolutely impossible. Nothing but a majority of return judges can give a valid certificate.

Now, sir, I am not in favor of instructing the clerk. I do not think it competent for the House to instruct him what he shall do, in this behalf. I appreciate the motives of the clerk in asking instructions, but how is it possible for the House to give the clerk instructions? To do that we must decide upon the merits of the case as it now stands in the papers before the clerk for his inspection. And if the clerk takes the liberty, or assumes the right to say that a majority of return judges is no evidence, is no *prima facie* evidence upon which he can enroll a member, then he must take the responsibility, and if he decides that a single judge, in spite of the majority, can give a member or members seats in this House in the preliminary organization, so be it. I am willing to leave that entirely with the clerk; but as he asks our opinion, I have no hesitation in saying that there is but one thing for the clerk to look at, and but one thing for the House to look at; and that is the fact that Meyers and Findlay have a certificate of a majority of return judges.

The House then voted upon Mr. Pershing's amendment, which was lost by a strict party vote, 36 ayes to 58 noes, all the Democrats voting in the affirmative and the Abolitionists in the negative; thus deciding that the certificate of *one* return judge (provided he be an abolitionist) is better evidence of an election than that of *two*, provided they are Democrats.

*Referring to the return signed by one judge.

"I think," said a farmer, "I should make a good congressman, for I use their language. I received two bills the other day, with a request for immediate payment. The one I ordered to be laid on the table, the other to be read that day six months."