

IN SENATE OF THE UNITED STATES.

MARCH 4, 1834.

Ordered to be printed.

Mr. POINDEXTER made the following

REPORT:

*The Select Committee to which was referred the credentials of Asher Robbins, chosen a Senator in Congress from the State of Rhode Island for the term of six years, to commence on the fourth day of March, 1833; and, also, the proceedings of the Legislature of said State, convened on the last Monday of October, 1833, declaring the election of the said Asher Robbins void, who, thereupon, proceeded to elect Elisha R. Potter a Senator in Congress for six years to commence on the fourth day of March, 1833, instead of said Asher Robbins, whose election to fill said office had been declared void as aforesaid, have had the whole subject, so referred to them, under their serious and attentive consideration, and submit the following report:*

That it appears by the credentials of Asher Robbins, and the proceedings of the General Assembly of the State of Rhode Island hereto appended, and marked A, that the Senate and House of Representatives of said State, then sitting in the city of Providence, met in Grand Committee in conformity to the usage of the Legislature in such cases, for the purpose of choosing a Senator to represent said State in the Congress of the United States; and that, on counting the ballots, it appeared that Mr. Robbins was elected by a majority of four votes, who was thereupon declared to be duly elected a Senator to represent said State in the Congress of the United States for six years from and after the fourth day of March then next following: that, having performed the duty for which the two houses had met, the Grand Committee was dissolved, and the members of each house repaired to their respective chambers. It further appears to your committee, that, on the twenty-eighth day of the same month of January, his Excellency Lemuel H. Arnold, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Asher Robbins as aforesaid, and caused the said commission, signed and sealed as aforesaid, to be delivered to the said Asher Robbins, which was presented to the Senate of the United States, in open session, on the fourth day of February, 1833; and, on motion, read and entered on the journals of the Senate. By virtue of the force and effect of the aforesaid commission, the said Asher Robbins, Senator elect from the State of Rhode Island, appeared in the Senate Chamber on the second day of

December, 1833, was duly sworn to support the constitution of the United States, and took his seat as a member of the Senate.

It further appears to your committee that, at a subsequent session of the General Assembly of Rhode Island, begun and held at the town of South Kingston, in said State, on the last Monday of October, 1833, certain proceedings were had relative to the election of the said Asher Robbins as above mentioned, which resulted in the adoption of a declaration or act of the said General Assembly, by which the election of Mr. Robbins is declared to be "null and void and of no effect," and the office vacated. Whereupon, at the same session of the General Assembly the two Houses met in Grand Committee on the first day of November, 1833, and proceeded to elect a Senator to represent the State of Rhode Island in the Congress of the United States for the term of six years, commencing on the fourth day of March preceding, to supply the vacancy created, or supposed to be created, by the act declaring the election of Mr. Robbins null and void: and the majority appearing to be in favor of Elisha R. Potter, the said Potter was thereupon declared to be duly elected a Senator in Congress from the said State for the term aforesaid, when the Grand Committee was dissolved and the members repaired to their respective chambers. That, on the fifth day of the same month of November, his Excellency John Brown Francis, governor of the State of Rhode Island, by commission in due form, bearing his signature, under the great seal of the State, did proclaim and make known the election of the said Elisha R. Potter as aforesaid, and cause the said commission, signed and sealed as aforesaid, to be delivered to the said Elisha R. Potter, which was presented to the Senate on the second day of December last, and on the fifth day of the same month referred to this committee. The documents relating to those proceedings are subjoined, and marked B. This statement of the case is deemed sufficient to show the questions which arise for the consideration of your committee, and which they now proceed to examine.

1. Was the commission of Asher Robbins made and executed in conformity with the provisions of the constitution of the United States, and the laws and usages of Rhode Island prescribing the time, place, and manner of choosing Senators to Congress?

2. Was Mr. Robbins, at the time of his election, eligible, according to the constitution of the United States, to the office of Senator?

3. Was he chosen by the *Legislature* of the State of Rhode Island?

If these questions be answered affirmatively, it will be unnecessary to inquire into the validity of the subsequent election of Mr. Potter, or into the power of the *Legislature* to create a vacancy, by annulling the act of their predecessors; and therefore your committee limit the views which they deem it proper to take of the subject referred to them, to the objections made to the commission of Mr. Robbins on the ground that the *Legislature* by whom he was chosen had no power to elect a Senator to Congress, and that the governor who signed and sealed his commission was not, at the time, competent to exercise any power, or perform any duty, in his official character. These objections rest on the same general principle; and if they are supported by the facts disclosed in the case, connected with the constitution and laws of the State, it will *then* be proper to examine the claims of Mr. Potter to a seat in the Senate, and not otherwise.

The constitution of the United States provides that "each house shall be

the judge of the elections, returns, and qualifications of its own members." Article 1, sec. 5.

The members of the House of Representatives are to be chosen by the people of the several States having the qualifications requisite for electors of the most numerous branch of the State Legislature. The members of the Senate are to be chosen by the Legislatures of each State, and the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Congress having passed no law on the subject, we must look into the statutes of the several States for those regulations, and conform our action to them. The Senators from each State are equal in number, and cannot be increased or diminished even by an amendment of the constitution, without the consent of the States respectively. They are chosen by the States as political sovereignties, without regard to their representative population, and form the federal branch of the National Legislature. The same body of men, which possesses the powers of legislation in each State, is alone competent to appoint Senators to Congress for the term prescribed in the constitution. In the performance of this duty, the State acts in its highest sovereign capacity, and the causes which would render the election of a Senator void, must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their Legislatures by the constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he, at the time of his election, a citizen of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs, and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its Legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the Legislature, or into the peculiar organization of the body for reasons to justify the Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the Legislature, whose elections were contested, might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void, who pos-

seced the requisite qualifications, and was chosen according to the forms of law and the constitution.

These general views are offered to show that contested elections in the popular branch of Congress, where the people exert, in their primary capacity, the right of suffrage under various limitations and restrictions in the choice of Representatives from certain prescribed districts, open a much wider field of inquiry and investigation than a like contest for a seat in the Senate, which is a body wholly federative in its character and organization, and whose members hold their appointments from, and represent, the States as political sovereignties. Your committee having regard to these rules as applicable to all contested elections in the Senate, proceed to apply them to the case now under consideration.

It is admitted that the sitting member, Asher Robbins, possesses all the qualifications required by the constitution of the United States to be a Senator in Congress, and that his commission, as such, is in due form according to the laws and usages of Rhode Island. These points being conceded, the remaining and the only question to be decided, is, was the body by which he was chosen a Senator, the *Legislature* of Rhode Island? or, was it merely an assemblage of citizens without authority to pass laws, prescribing that which is right, and prohibiting that which is wrong, to the people of the State? On this ground both parties seem content to rest their claims to a seat in the Senate.

The General Assembly of Rhode Island, as at present organized, consists of two separate and distinct branches; the Senate, over which body the governor presides, and the House of Representatives—each chosen by the people of the State who are freemen or freeholders, and entitled to vote at elections. The governor and Senate are elected annually. The members of the House of Representatives semi-annually. To constitute a Legislature capable of enacting laws, or performing any other duty confided to that body by the constitution of the State or of the United States, it is essential that there should be in existence, at the same time, a governor, or some officer authorized to perform the executive functions; a Senate, and House of Representatives. In the absence of either, the other branches could not perform any act which would be obligatory on the people of the State. We are then brought to the inquiry whether these component parts of the Legislature of Rhode Island were assembled at Providence, in January, 1833, when Mr. Robbins was elected in Grand Committee a Senator to Congress? It is alleged, on the one hand, that the governor and Senate had ceased to exist in the month of May, 1832, by the expiration of the term of one year for which they had been elected, and the failure of the people to elect their successors by a majority of all the votes given in, according to the constitution and laws of the State. On the other, it is maintained that the powers of the governor and Senate were, by law, extended until their successors should be duly chosen and engaged, for which purpose special elections were ordered and held, but without success, prior to the time at which Mr. Robbins was elected. For the purpose of forming a correct judgment of this anomaly in the constitution of the State, it is necessary to recur to the ancient charter of Charles the Second of England, granted to the colony of Rhode Island and Providence Plantations in 1663, which has not been superseded by a written constitution since the revolution; and to the various laws which have been enacted, modifying the provisions of that charter in such manner as to adapt it to the condition and convenience of the people of the State. By the charter, certain political powers, rights, and

privileges, are granted to the inhabitants of the colony, among which are the following:

"And, further, we will and ordain, and by these presents, for us, our heirs, and successors, do declare and appoint that, for the better ordering and managing of the affairs of the said company and their successors, there shall be one governor, one deputy governor, and ten assistants, to be from time to time constituted, elected and chosen, out of the freemen of the said company for the time being, in such manner and form as is hereafter in these presents expressed; which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of, and concerning the lands and hereditaments hereinafter mentioned to be granted, and the plantation thereof, and the government of the people there."—*Charter of R. I., page 6th, Digest 1822.*

"And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener in case it shall be requisite, the assistants, and such of the freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth, and Warwick, and two persons for each other place, town, or city, who shall be from time to time thereunto elected or deputed by the major part of the freemen of the respective towns or places for which they shall be so elected or deputed, shall have a general meeting or assembly, then and there to consult, advise, and determine in and about the affairs and business of the said company and plantations. And, further, we do, of our especial grace, certain knowledge, and mere motion, give and grant unto the said governor and company of the English colony of Rhode Island and Providence Plantations in New England, in America, and their successors, that the governor, or, in his absence, and by his permission, the deputy governor of the said company for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid elected or deputed, or so many of them as shall be present at such meeting or assembly as aforesaid, shall be called the General Assembly; and that they, or the greatest part of them then present, whereof the governor or deputy governor, and six of the assistants, at least to be seven, shall have, and hereby have, given and granted unto them full power and authority from time to time, and at all times hereafter, to appoint, alter, and change such days, times, and places of meeting and general assembly, as they shall think fit, &c." \* \* \* \* \*

"And from time to time to make, ordain, constitute, or repeal, such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet for the good and welfare of the said company, and for the government and ordering of the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall inhabit, or be within the same, so as such laws, ordinances, and constitutions, so made be not contrary and repugnant unto, but as near as may be agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there."—*Digest of 1822, pages 6, 7, & 8, of Charter.*

"And further, our will and pleasure is, and we do hereby for us, our heirs and successors, establish and ordain that yearly, once in the year forever hereafter, namely, the aforesaid Wednesday in May, and at the town of Newport, or elsewhere, if urgent occasion do require, the governor, de-

puty governor, and assistants of the said company, and other officers of the said company, or such of them as the General Assembly shall think fit, shall be in the said General Court or Assembly to be held from that day or time, newly chosen for the year ensuing by such greater part of said company for the time being as shall be then and there present."—*Digest of 1822*, page 9th of the Charter.

These extracts from the charter will serve to show the original structure of the government of Rhode Island and Providence Plantations. The charter provides that the governor, deputy governor, and assistants, shall be chosen annually on the first Wednesday of May in each and every year, by a majority of the company at Newport. The deputies to the General Assembly were to be chosen in the several towns for which they were elected semi-annually, and to assemble on the first Wednesday in May, and the last Wednesday in October, or oftener, in case it should be requisite, at such place as might be designated by law. The governor, deputy governor, assistants and deputies, as organized under the charter, formed one body, which is called the General Assembly.

The unlimited power granted to this body to repeal or modify the existing regulations for the government of the colony, or to adopt such new regulations as might be deemed expedient for the convenience of the people, has been exercised from time to time before and since the revolution, when Rhode Island became one of the States of the Union. These modifications have materially changed the provisions of the charter, and established fundamental principles of government, inconsistent with those recognized and ordained by the charter, which now remains only the nominal foundation of the legislation of the State. Your committee think it necessary to present a summary of these interpolations on the charter, as they furnish a practical illustration of the powers claimed and exercised in this respect by the General Assembly of Rhode Island, the validity of which does not seem to have been at any time questioned.

1. By the last clause of the charter above cited, the election of governor, deputy governor, and assistants, is required to be made at Newport on the first Wednesday of May in each year, by the whole body of the freemen of the company assembled at that place in person. This is the literal requirement of the charter, and was made, we presume, in conformity to analogous customs in England and Wales in the elections for counties and boroughs. The difficulty of convening the freemen from the different towns of the colony at the season indicated, and the expense and inconvenience attending their assemblage at Newport for an uncertain length of time until an election could be effected, very speedily suggested a modification of this requirement. As early as October 26, 1664, a little more than one year after the reception of the charter, after stating the inconveniences attending a personal voting at Newport, the General Assembly ordained, that "voting by proxies be enjoyed by all the freemen of this colony, and that each freeman desiring to vote by proxy shall subscribe their names on the outside, and deliver his votts sealed up into the hands of a majestrate in the face of a towne meeting lawfully called, and notice given for that purpose \* \* \* \* \* which sayd votts shall be by such whome the General Assembly shall appoynt, opened and delivered forth as the respective choice of the several votts shall require: provided that this order shall noe way prejudice or discourage any who desire to be personally present." *Ancient Records*, p. 258.

This palpable departure from the original provisions of the charter con-

tinued to be the law of Rhode Island for nearly a century, viz. until August 1760, when a different arrangement was substituted, but still more manifestly departing from the literal requirements of that instrument.

9. As stated in our remarks immediately following the passages of the charter above cited, the General Assembly of the colony was constituted into one body, consisting of a governor, deputy governor, and ten assistants, and so many deputies elected from the freemen of the several towns as are specifically stated in the second of those quotations. This single body was invested with all the powers, legislative and judicial, which the clauses of the charter enumerate, and acted as a single body, determining its acts by a majority of voices for the three successive years, subsequent to its creation by charter. In March 27, 1666, at the suggestion of the towns of Portsmouth and Warwick, an act passed the General Assembly, "concerning deputies sitting apart." After stating the inconveniences of a single assembly, they enact and declare, that "it is freely agreed that the request of the towns aforesaid be granted, and ordered that the magistrates" (gov., dep'y gov., and assistants) "sitt by themselves, and the deputies by themselves; and that each house soe sitting have equal power and priviledge in the proposing, composing, and propogating any act, order and law in Generall Assembly, and that nether house in Generall Assembly shall have power without the concurrence of the majour part of the other house, to make any law or order to be accounted as an acte of the Generall Assembly."—*Ancient Records*, p. 298.

This law of the Assembly of 1666, and not the charter, is the whole basis of the present organization of the Legislaturæ of Rhode Island, which consists, as we have before stated, as at present constituted, of two branches—a Senate, and a House of Representatives, each armed with a negative upon the other.

8. The act of August, 1760, is another and remarkable departure from the literal requirements of the charter of King Charles. By the charter itself the whole body of freemen of the colony were to assemble, in person, at Newport, and to elect, by a major vote of the company, the governor, deputy governor, and assistants. The law of October, 1664, relaxed this provision, and substituted a mixed system of voting for these officers, partly in person, and partly by proxy. This continued to be in force until the session of the General Assembly in August, 1760, when a law was passed entitled "An act regulating the general election." In the preamble to this act, it is set forth "that, it is found, by long experience, the freemen going to Newport to put in their votes for general officers at the elections is very injurious to the interest and public weal of the colony; \* \* \* and that all the ends of voting may be as fully attained by the freemen's putting in their proxy votes at the town meeting in their own towns, appointed by law for that purpose, agreeable to the ancient and laudable custom of most of the prudent freemen. Therefore,

"*Be it enacted*, That, for the future, every freeman who is disposed to give his suffrage at the election of general officers in this colony, shall do it, by putting in a proxy vote in the town meeting *in the town* to which he belongs, on the third Wednesday of April next preceding the general election, agreeable to the law and well-known custom of proxying; and no freeman shall be permitted to vote for general officers at the general election held at Newport, on the first Wednesday in May, but only such as be members of the General Assembly."—Thus, by this act of the Legislaturæ, the whole sys.

tem of voting laid down by the charter is radically altered. The assembling of the freemen of the colony at Newport on the first Wednesday in May, as the charter prescribes, is entirely abrogated: the mixed method of voting, partly in person and partly by proxies sent to Newport from the other towns of the colony, is also modified; and the whole system is changed to the law as it now stands, with very slight variations, viz. that the freemen, on the third Wednesday of April in each year, in their *several towns*, shall proceed to elect a governor, deputy governor, and assistants, and not in one body assembled in Newport, on the first Wednesday in May.

The law of 1760 was deficient in one important particular, which the act of January, 1832, (the particular act now complained of) was intended to remedy. Formerly, and from the reception of the charter until August 1760, a failure to elect general officers was a contingency not to be apprehended, because the freemen assembled at Newport would continue assembled and voting until a choice were effected. But by the act of August, 1760, the freemen were to vote in *separate towns*, and the votes thus given having been transmitted to Newport, were counted in the presence of the governor and assistants of the former year, in convention with the deputies then recently elected. If it appeared, on counting, that there was no choice by the major part of the freemen, there was no provision in this act for a second trial for these offices in *the separate towns*; and the body of the freemen not being assembled in Newport, it was impossible to go on in the ancient method, and continue to vote 'till the choice was consummated. If the requirements of the charter, and the usages under it, had been strictly complied with, the body of the freemen would have appeared at Newport, the governor and assistants of the former year would have presided in the election, and the voting would have gone on until an election were completed. The act of August, 1760, having changed this arrangement in the manner above stated, all that the act of January, 1832, did, was to follow out its provisions, and to declare that the governor and assistants of the former year should hold over, while other trials were had in *the separate towns*, and until an election of general officers was effected by those trials, exactly as they would have held over if the election had been made by the body of the freemen assembled at Newport. But of the character of this act, your committee will speak more particularly hereafter.

4. Your committee will barely advert to two other acts of the Legislature of Rhode Island which conflict more or less with the provisions of the charter, but whose validity they believe has never been disputed; such as the act devolving the powers and duties of governor on a person who had never been elected by the freemen to that office, in certain cases; also, the act authorizing the governor, in certain events, to appoint times and places of the meeting of the General Assembly, although the charter provides that the assembly itself shall appoint such times and places; both these acts being embodied in "the act to provide for the performance of the duties of the governor in certain cases, and also for regulating the sitting of the General Assembly."—*Digest of 1822, p. 99.*

One other act of the General Assembly deserves notice in this connexion, as illustrating, in a striking manner, the peculiar character of legislation in Rhode Island. The bill of rights, which, in all the other States, emanates from the people in their primary capacity, in this State is incorporated into its code of statutes in the form of an act declaratory of the rights of the people.



The foregoing review of the innovations made from time to time, during the existence both of the colonial and State Governments of Rhode Island on the provisions of the charter conferring on the people political rights, demonstrates the power claimed and exercised by the General Assembly to alter or modify, without restraint, the fundamental principles of the form of Government transmitted to them by the King of Great Britain. This power has never been denied either in reference to its validity or extent. The right of suffrage has been extended to a class of citizens who did not enjoy it under the charter; the elections directed to be held at Newport on the first Wednesday of May in each year, are held throughout the State on such days and at such places as are provided for by law; the manner of holding and conducting elections and of returning the votes is changed; the General Assembly is divided into two separate branches, each having a negative on the action of the other, contrary to the charter, by which it is constituted into one body; a bill of rights, which properly belongs to the constitutions of the several States as a part of the fundamental law, has been given to the people of Rhode Island by a simple act of legislation. These, and many other primary principles, are to be found in the code of statute law of that State, while, of the ancient charter, there seems to be scarcely a vestige remaining untouched, except that clause which prohibits the enactment of any law contrary to the laws of England, and this became obsolete by virtue of the revolution.

The people of the State have ratified all these changes, not only by their silent acquiescence, but by their positive sanction. The power to make them was necessary to the welfare of the people, and was wisely reserved in the precise words of the charter. Your committee can perceive nothing in the act of January, 1832, entitled "An act in addition to an act entitled an act regulating the manner of admitting freemen, and directing the method of electing officers in this State," which assumes a power different in its character from that which had been previously recognized as appertaining to the General Assembly. The necessity of proper precautions to prevent an *interregnum* in the Government of the State was seen and duly considered by the Legislature. They believed it to be not only possible, but highly probable, that the people might fail at the regular annual election to choose a governor, lieutenant governor, and a sufficient number of senators, to form a constitutional quorum for the transaction of business. The result proves that this apprehension was well founded. The first section of the act declares, that, in case there be no choice of a governor at an annual election the House of Representatives shall order a new election for the choice of a governor, and that, in case no choice should then be made, that the order shall be renewed as often as the votes are returned to the General Assembly, until a governor be elected, or until such proceedings shall become unnecessary by reason of the provision of law for the next annual election; and in the mean time that the governor of the preceding year shall continue, under his former engagement, to exercise all the powers, and perform and execute all the functions or duties of the office of governor until another shall be elected and engaged in his place; and shall receive such proportion of the salary as corresponds with the time he shall so serve. The same provisions are made as to the lieutenant governor and all the other general officers, in case of a like failure to elect those officers at the annual election. The third section of the act relates to the choice of Senators, (assistants,) and directs that new elections shall be ordered as in the cases above mentioned

and with the same limitations, unless six senators, being the requisite number to form a quorum, shall have been chosen at the annual election. The contingencies intended to be provided against by this act actually occurred. No governor nor lieutenant governor was chosen to succeed those of the past year; the number of senators required for a quorum were not elected by the people; and, in compliance with the provisions of the act, new elections were ordered by the House of Representatives where a failure to elect had happened, until, in the judgment of that house, "such proceedings had become unnecessary by reason of the provision of law for the next annual election."

The General Assembly in the mean time, as at that time constituted, continued to perform all the functions which properly belong to that body until the end of the session at Providence, January, 1833. It remains then to be inquired, was this body so assembled the *Legislature* of Rhode Island? The law by virtue of which they continued to exercise the powers of legislation is said to be repugnant to the charter, and therefore void. If this be a sound objection, it at once annuls every part of their proceedings, and, as a necessary consequence, that of choosing a Senator in Congress.

Your committee are unable to find any clause in the charter which forbids the exercise of such a power as that claimed by the passage of the act of January, 1832. It seems, on the contrary, to have been the intention of the crown to perpetuate the existence of the legislative power in the colony by an express provision—that the authority, office, and power, of the governor, deputy governor, and assistants, shall cease and determine when their successors shall be elected and engaged, and not at the expiration of the term for which they were respectively chosen. The construction of this clause of the charter has been uniform from the commencement of the Government up to the present time.

The governor, deputy governor, and senators, (assistants) of the preceding year, at the opening of each annual session of the Legislature in May, take their seats, and join the House of Representatives in Grand Committee, and continue to act until their successors are engaged. This is abundantly sufficient to prove that they hold over, as a matter of course, for the purpose of organizing the members newly elected to succeed them; and it does not seem to be material whether the time required for the performance of this duty be one or more days; for, the same principle under which they hold over for a single day would apply to a longer time, if it should be required to complete the organization. But it is not necessary to resort to this provision of the charter, or to the practice under it, to establish the validity of the power to pass the act of January, 1832. The general power given in the charter to the Legislature, "from time to time, to make, ordain, constitute, or repeal such laws, statutes, orders, and ordinances, forms and ceremonies of Government, and magistracy, as to them shall seem meet," without limitation, is broad enough to cover the whole ground assumed in justification of that act. If Rhode Island had followed the example of her sister States of the Union, and adopted a written constitution, it will not be denied that this power to continue in existence the legislative body until their successors should be chosen and engaged, might have been given in that instrument. Shall we then deny to her the right to effect the same object by law, when the people have, by a long and uninterrupted acquiescence in that mode of fixing the fundamental principles of the Government, imparted to such laws the force and efficiency of a constitutional provision emanating from a con-

vention chosen for that special purpose? Your committee hold it to be an undeniable principle, applicable to all forms of Government, that there must exist in the supreme legislative power of the State a capacity to preserve itself from annihilation. Waiving, therefore, all the considerations arising out of the charter and the immemorial usage of the State, which might be safely relied upon to justify the act in question, there are other grounds on which the exercise of the power claimed may be sustained and vindicated. The constitutions of the several States are, in the broadest sense, *popular*, emanating directly from the people, and subject to be modified and amended as the people may think proper. The legislative power embraces every object without distinction, which is not expressly prohibited by a declaration of rights, or an article of the constitution. The structure of the State Governments, differs in this important respect from the Government of the United States, which is restricted in its sphere of action to the delegated powers, and such as are necessary and proper to carry them into effect. On this principle, the Legislature of Rhode Island, in the absence of a written constitution, could only be restrained in the extent of its powers by some negative provisions of the charter or of the bill of rights subsequently adopted for the better security of the people in the enjoyment of liberty. In neither of these, nor in any other act or instrument now in force, is there to be found any prohibition of the power to continue over an existing Legislature until their successors shall be duly chosen and engaged. The act of January, 1832, was deemed to be necessary, to preserve the Government from dissolution, and to provide for new and extraordinary elections by the people. It has been sanctioned by the people by their action under it, in their primary capacity, and by the constituted authorities of their State in the several departments. All the laws, either of a private or general nature, passed by the legislature at their several sessions from the first Wednesday of May, 1832, to the close of the session January, 1833, are now in full force and operation. The highest judicial tribunal of the State was composed of judges elected in Grand Committee of the two houses at the August session, 1832; and their commissions were issued, under the great seal of the State, and the signature of the governor, who was continued in office by the provisions of the act of January, 1832.

Your committee could not expect to find evidence more satisfactory of the character of the body by which Asher Robbins, the sitting member, was elected a Senator to Congress in January, 1833.

The constitution of the United States expressly declares that "the Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof;" but what is the definition of the term Legislature? Both its literal and technical meaning is, "the power that makes laws." It is the highest attribute of sovereignty, and merges all other powers when it does not transcend the limitations contained in the fundamental constitution of the State. When, therefore, we find that, during the existence of the General Assembly, one branch of which was continued and held their seats by virtue of the law of January, 1832, this Legislature passed fourteen laws of a general nature, and twenty-eight private acts, many of them acts of incorporation, besides numerous resolutions on various subjects falling within the range of legislative power, a senedule of which is hereunto annexed, marked C.; and when these laws and resolutions remain on the statute book of Rhode Island in full force and effect, sanctioned by judicial decisions, and tacitly submitted to by the people over whom they

operate, it would seem to your committee a very dangerous assumption of power in one branch of Congress, or even in every department of the General Government combined, to interfere with the internal regulations of the State, and to denounce the body by which these laws and resolutions were passed as a mere assemblage of citizens without any public authority whatever, and not the Legislature of the State. Such a power does not belong to the Federal Government, and would, if claimed and carried out to its full extent, annihilate all the reserved rights of the States. It is a general principle of national law, applicable to all distinct and independent Governments, that if there arise any disputes in a State on the fundamental laws and public administration, or on the prerogatives of the different powers of which it is composed, it is the business of the State alone to judge and determine them in conformity to its political constitution. No Government has a right to intrude into the domestic affairs of another State, and attempt to influence its deliberations or to control its action. This principle is recognized in the constitution of the United States, by which the respective States united and formed themselves into a Federal Republic. Conceding, as we feel bound to do, to the State of Rhode Island, in common with all the other States of the Union, the power to decide for itself all questions relating to its domestic policy, there would seem to be no ground on which to rest a doubt that she has decided, in the most solemn manner, the character and powers of the body by which Mr. Robbins was chosen a Senator to Congress. They passed numerous laws which are in full force. They elected judges of the Supreme Court of the State, who have taken a new engagement or oath of office, and accepted new commissions from the governor; entered on their official duties, and condemned to death a citizen found guilty of a capital offence against the laws of the State. They received compensation out of the treasury of the State for their services, and disbursed the public money necessary for the support of the Government. No question has arisen touching or impugning the validity of any one of these acts, because they were passed or performed by an incompetent body, with the single exception of the attempt made by a succeeding Legislature to vacate the election of Mr. Robbins. Your committee cannot omit to refer to the preamble of the act annulling that election, in which the Legislature fully recognize their predecessors as "the General Assembly" of the State. The only ground assumed to justify the act declaring the election null and void, is comprised in a single sentence of the preamble, in the following words:

"Whereas THE GENERAL ASSEMBLY which elected Asher Robbins a Senator to the Senate of the United States on the nineteenth day of January last, *did not comply with the provisions of an act* entitled "An act in addition to an act entitled 'an act regulating the manner of admitting freemen, and directing the method of electing officers in this State,' by virtue of which the members of one branch of said Assembly then held their offices, *but proceeded prematurely therein*, and the said election is *therefore void*, and ought so to be declared by this Assembly. Therefore, Be it enacted, &c."

Again: the same Legislature at their session held in May, 1833, passed an act to repeal the law of January, 1832, in the ordinary form, but express no opinion that the law so repealed was null and void, and thereby admit its validity up to the date of the repealing act. It is worthy of remark, also, that the same Legislature at the session held in October, 1833, passed a special act to carry into effect an act of the Legislature passed in January, 1833, changing the mode of electing representatives to Congress, and declaring

that a plurality of votes should in future decide the election in certain cases, contrary to the former and long established law of the State, by which a majority of all the votes polled at any such election was necessary to a choice in all cases. Thus the power of the Legislature assembled in January, 1833, to enact this important law, is fully acknowledged and conceded by their successors, while their power to elect a Senator to Congress is denied, and declared null and void. Your committee advert to these acts as conclusive, in reference to the character of the body of men which elected Mr. Robbins. If they were competent to bind the people of the State by general laws, which is no where contested, they could only exercise such a power in their capacity as the Legislature of the State, and, as such, it was their constitutional right and incumbent duty to choose a Senator to Congress. There was but one governor and but one Senate in the State claiming to be a part of the General Assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States. But in the absence of any such conflicting claims to these offices, when only one legislative body was known in the State which exercised all the power, and performed all the functions of the Legislature, and whose acts have in every form, and by every department of the Government, been declared valid, it would seem to be a palpable invasion of the sovereignty of the State to abrogate its laws, and overthrow its government, by denying that a body capable of exercising the powers of legislation existed in the State after the term for which a governor, lieutenant governor, and senators, chosen at the annual election in April, 1831, had expired. To annul the election of Mr. Robbins would involve all these absurdities, and must be productive of confusion and anarchy in the State of which he has been chosen a Senator in Congress.

*The time* at which the election took place, and *the manner* in which it was conducted, were in strict conformity to the laws of Rhode Island. The two houses met in Grand Committee according to law, at the session of the General Assembly next preceding the expiration of the term of service of Asher Robbins, then a Senator in Congress, and elected him for another term of six years, to commence on the third day of March, 1833, and then the Grand Committee assembled for this purpose was dissolved. The choice was made by the *Legislature* of the State, whose laws are held to be valid and binding throughout the State; they command and receive obedience from the people. No objection is made, or can be made, either to *the time or manner* of the election. The Senator elected has all the requisite *qualifications* demanded by the constitution, and his *commission or credentials* were, *in due form*, delivered to him, and presented to the Senate. Your committee hold this to be a vested right, the obligation and effect of which no subsequent Legislature of that State could impair; still less had they authority to proceed to the election of another Senator until the seat of the Senator elect had been vacated by a solemn decision of the Senate of the United States. With these views of the subject referred to them, your committee recommend the adoption of the following resolution:

*Resolved*, That Asher Robbins, being duly and constitutionally chosen a Senator in Congress from the State of Rhode Island, is entitled to his seat in the Senate.

A.

STATE OF RHODE ISLAND, &amp;c.

*Saturday, January 19th, 1833.*

In Grand Committee, elected Asher Robbins Senator in Congress for six years from the fourth of March next

Robbins 41:                      Potter 25:                      Pearce 12.

Grand Committee rose.

True copy from Senate Journal.

HENRY BOWEN, *Secretary.*

### CREDENTIALS OF THE HON. ASHER ROBBINS.

By his excellency Lemuel H. Arnold, governor, captain general, and commander in chief of the State of Rhode Island and Providence Plantations:

Be it known that Asher Robbins, of Newport, in the State aforesaid, qualified according to the constitution of the United States for a Senator in the Congress thereof, was, by the Legislature of said State, at the session thereof holden by adjournment, at Providence, on the second Monday of January instant, elected a Senator from said State in the Congress of the United States, for six years, commencing on the fourth of March next.

In testimony whereof, I have hereunto set my hand, and [ L. s. ] caused the seal of said State to be affixed, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred thirty-three, and of independence the fifty-seventh.

LEMUEL H. ARNOLD.

By his excellency's command:

HENRY BOWEN, *Secretary of State.*

### VACATING ACT.

*State of Rhode Island and Providence Plantations, in General Assembly, October Session, A. D. 1833.*

Whereas the General Assembly which elected Asher Robbins a Senator to the Senate of the United States on the nineteenth of January last, did not comply with the provisions of an act entitled "An act in addition to an act regulating the manner of admitting freemen, and directing the method of electing officers in this State," by virtue of which the members of one branch of said Assembly then held their offices, but proceeded prematurely therein, and the said election is therefore void, and ought to be so declared by this Assembly. Therefore,

*Be it enacted by the General Assembly, and by the authority thereof it is enacted,* That the said election be, and the same is hereby declared to be null and void, and of no effect; and the office is hereby declared to be vacant.

True copy of record. Witness:

HENRY BOWEN, *Secretary.*

By his excellency John Brown Francis, governor, captain general, and commander in chief of the State of Rhode Island and Providence Plantations.

Be it known that the name "Henry Bowen" to the afore-written attestation subscribed, is the proper hand-writing of Henry Bowen, esquire, who.

at the time of subscribing the same, was Secretary of the State aforesaid, duly elected and qualified according to law: Wherefore, unto his said attestation full faith and credit are to be rendered.

In testimony whereof, I have hereunto set my hand, and caused  
 [ L. s. ] the seal of said State to be affixed at Providence, this fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.  
**JOHN BROWN FRANCIS.**

By his excellency's command:

**HENRY BOWEN, Secretary.**

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**B.**

**CREDENTIALS OF ELISHA R. POTTER.**

By his excellency John Brown Francis, governor, captain general, and commander in chief of the State of Rhode Island and Providence Plantations:

Be it known that Elisha R. Potter, of South Kingstown, in the State aforesaid, qualified according to the constitution of the United States for a Senator in the Congress thereof, was, by the Legislature of said State, at the session thereof holden at South Kingstown on the last Monday in October last, elected a Senator from said State in the Congress of the United States, for six years, commencing the fourth day of March last.

In testimony whereof, I have hereunto set my hand, and caused  
 [ L. s. ] the seal of said State to be affixed at Providence, the fifth day of November, in the year of our Lord one thousand eight hundred and thirty-three, and of independence the fifty-eighth.  
**JOHN BROWN FRANCIS.**

By his excellency's command:

**HENRY BOWEN, Secretary.**

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**C.**

*Public acts passed by the General Assembly of Rhode Island and Providence Plantations from May, 1832, to the close of the session, January, 1833.*

1. An act relating to the Burrillville Bank.
2. An act authorizing the City Council of the city of Providence to appoint a larger number of members of engine company No. 5.
3. An act relating to the overseers of the poor, and to the asylum, in the town of Portsmouth.
4. An act in relation to the returns of certain justices of the peace.
5. An act in further amendment of an act to establish public schools.
6. An act in addition to the acts in relation to quarantine, and to the introduction and spreading of contagious and infectious sickness in this State.
7. An act authorizing certain military officers to be engaged in their commissions.
8. An act in addition to an act entitled an act appointing the several town councils in this State boards of health ex officio.
9. An act, (Nov. 1832,) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the elections of a President and Vice President of the United States.

10. An act authorizing certain military officers to take their engagements or their commissions.

11. An act to prevent hogs going at large in Washington village, in Coventry.

12. An act in relation to extra-judicial oaths.

13. An act, (January, 1833,) in amendment of an act entitled an act relative to the election of Senators and Representatives to represent this State in Congress, and of electors for the election of a President and Vice President of the United States.

14. An act regulating criminal process in certain cases.

*Private acts passed by the General Assembly of the State of Rhode Island and Providence Plantations from May, 1832, to the close of the session, January, 1833.*

1. An act to incorporate certain persons as a society by the name of St. James Church at Woonsocket Falls, in Smithfield.

2. An act to legitimate Maria, the daughter of Thomas A. and Mary Ann Potter.

3. An act to authorize Henry Yates and Archibald McIntyre to put forth a lottery for the benefit of public schools.

4. An act to incorporate the Greenville Fire Engine Company.

5. An act to revive the charters of certain military companies.

6. An act to incorporate the Providence Steamboat Company.

7. An act to incorporate the Phœnix Iron Foundry.

8. An act to revive the charters of certain military companies.

9. An act to amend the charter of the Providence Marine Corps of Artillery.

10. An act in amendment of an act incorporating a society by the name of the Pawcatuck Academy Company.

11. An act to incorporate the New York, Providence, and Boston Railroad Company.

12. An act to incorporate the Rhode Island and Connecticut Railroad Company.

13. An act to authorize the corporation of St. John's Church, in Providence, to tax the pews in said church

14. An act in addition to an act entitled an act to incorporate certain persons by the name of the "First Universalist Society in the town of Providence."

15. An act to authorize John A. Grace to hold, convey, and transmit real estate in this State.

16. An act to incorporate the Albion Village Fire Engine Company.

17. An act to incorporate the Commercial Insurance Company in Newport.

18. An act to authorize John Chatburn to hold, convey, and transmit real estate.

19. An act to incorporate the Warren Rhode Island Seaman Friends' Society.

20. An act in amendment of an act entitled an act to incorporate the Rhode Island and Connecticut Turnpike Corporation.

21. An act to authorize John Paine and Daniel Burgess to put forth a lottery for the benefit of public schools.

22. An act to incorporate certain persons by the name of the First General Baptist Church in Warwick.

23. An act to revive "an act in amendment of an act to incorporate the



Providence and Boston Railroad Company, and for other purposes, and in amendment thereof, and in addition thereto.

24. An act to incorporate certain persons by the name of the Woonsocket Falls Baptist Society.

25. An act to incorporate the Gloucester and Burrillville Safe-guards.

26. An act to incorporate the stockholders of the West Greenwich Farmers' Bank in the town of West Greenwich.

27. An act to incorporate the stockholders of the Commercial Bank in the city of Providence.

28. An act to incorporate the stockholders of the Citizens' Union Bank.

In addition to the above, the same General Assembly, from May, 1832, to January, 1833, inclusive, passed

*Thirty-ne votes or resolutions* liberating the persons or commuting the punishments of convicts.

*Thirty-seven votes or resolutions* authorizing the sales of real estates.

*Three resolutions* authorizing persons to apply to the Supreme Court for decrees of divorce.

*Six votes or resolutions* releasing the persons of insolvent debtors on giving bond, &c.

*A resolution* for the payment of the salaries of the governor and lieutenant governor of the preceding year.

*A resolution* for the payment of the State map.

*Resolutions* for the payment of a great variety of accounts.

*Several votes* authorizing new trials

And, finally, elected all the officers, civil and military, of the State, who severally took their commissions, and acted under them during the whole of that year.