ACT OF ADMISSION

(May 11, 1858)

11 U. S. Statutes at Large, 285; 35 Congress, I sess., ch. 31.

Chap. XXXI.—An Act for the Admission of the State of Minnesota into the Union.

Whereas an act of congress was passed February twenty-six, eighteen hundred and fifty-seven, entitled "An act to authorize the people of the territory of Minnesota to form a constitution and state government preparatory to their admission into the union on an equal footing with the original states;" and whereas the people of said territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people, at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose: therefore

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the state of Minnesota shall be one, and is hereby declared to be one of the United States of America, and admitted into the union on an equal footing with the original states in all respects whatever.

Sec. 2. And be it further enacted, That said state shall be entitled to two representatives in congress until the next apportionment of representatives among the several states.

Sec. 3. And be it further enacted, That from and after the admission of the state of Minnesota, as hereinbefore provided, all the laws of the United States which are not locally inapplicable shall have the same force and effect within that state as in other states of the union; and the said state is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Iowa, shall be established; the judge, attorney, and marshal of the United States for the said district of Minnesota shall

reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Iowa; and in all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States, upon any record from the supreme court of Minnesota territory, the mandate of execution or order of further proceedings shall be directed by the supreme court of the United States to the district court of the United States for the district of Minnesota, or to the supreme court of the state of Minnesota, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Minnesota territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

Approved, May 11, 1858.

APPENDIX

HOW MINNESOTA BECAME A STATE *

BY

PROF. THOMAS F. MORAN

* Written during studies in the Department of History at Johns Hopkins University; accepted by the Publication Committee, July 16, 1896.

[MLHP: This paper was published first in volume 8 Collections of the Minnesota Historical Society 148-184 (1898). Only the last part is posted here; the part on debates in Congress on the Enabling Act is posted in the appendix to that legislation on the MLHP. The article has been reformatted; page breaks added; original spelling and punctuation have not been changed.

This article is a companion to the article on The Enabling Act, which also contains Moran's account of how the obstacles to its passage were overcome. The Enabling Act should be read first.]

IV. THE ACT BY WHICH THE STATE WAS ADMITTED.

PRELIMINARY DISCUSSION IN THE SENATE.

On January 11, 1858, President Buchanan notified Congress that he had received from Samuel Medary, governor of the Territory of Minnesota, a copy of the constitution for the proposed State, certified in due form. The copy mentioned was sent to the Senate. On motion of Mr. Douglas, the whole matter was referred to the Committee on Territories.

A bill for admission was reported to the Senate in due time, and on January 28, Mr. Douglas urged its consideration. Jefferson Davis of Mississippi opposed present consideration, and was upheld by the vice president, John C. Breckenridge of Kentucky. On February 1, Mr. Douglas again tried to call up the bill, but Mr. Gwin of California insisted on the consideration of the Pacific railroad bill, which he had in charge. Mr. Douglas urged that in justice to the senators elect from Minnesota the bill should be acted upon at once. These senators, Henry M. Rice, and James Shields, had been in Washington since the early part of the session waiting to be admitted to their seats. Crittenden and Seward supported the position taken by Mr. Douglas, while Mr. Gwin, supported by some of the southern senators, demanded consideration for his railroad measure.

Kansas was seeking admission at this time under the Lecompton (or Slavery) constitution, and many of the southern senators were desirous of postponing action upon the Minnesota bill until the Kansas question was disposed of. In this they were successful, as will be seen subsequently. Mason of Virginia wanted to wait and see the attitude of the northern senators on the Kansas matter, and was in favor of taking up the Minnesota and Kansas bills together. He thought it [170] might be necessary for the "southern States to determine where they stand in the Union."

Mr. Wilson of Massachusetts, in reply, stated that he and others were determined to oppose in every way the admission of Kansas under what he termed the "Lecompton swindle." He insisted that there was no connection between the Minnesota and Kansas cases and hence no reason for considering them together. Mr. Bayard

opposed the immediate consideration of the Minnesota bill, saying that the main object of the northern men seemed to be to get in the new senators. Mr. Hale thought it unjust to alter the regular order of proceedings in order to wail on Kansas. Mr. Douglas held that, since the Kansas matter was not now before the Senate, it would be ridiculous to enter into the merits of the question.

Mr. Brown insisted, in an incendiary speech, that Kansas and Minnesota should stand or fall together. Assuming a menacing attitude, he said: "If you admit Minnesota and exclude Kansas, standing on the same principle, the spirit of our revolutionary fathers is utterly extinct if this Government can last for one short twelve-month." [1] Do you want, he asked, two more senators to aid you in excluding Kansas?

Mr. Crittenden thought the admission of Minnesota a mere formal proceeding, and considered it an injustice to delay the admission of that State simply because there was a controversy about Kansas. He gave utterance to strong Unionist sentiments, and charged some of his old colleagues with trying to strengthen their arguments by prophesying the overthrow of the government.

To this Mr. Green replied: "Here let me say, this Union cannot be sustained by singing songs to its praise. If we find the car of the Republic sunk in the mire, and get down on our knees and sing praise to it, and call on the gods to aid us, and put not our own shoulder to the wheel, it will never be extricated from the difficulty." We must strive to meet and ward off the difficulties which beset us. "This is the only method of preserving this glorious Union." [2]

The contest for precedence between the Minnesota and Pacific railroad bills was thus sharply waged until the shades [171] of evening put an end to the debate and decided that both measures, for that day at least, should be postponed.

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[1] Cong. Globe, vol. 44, p. 501.
[2] Ibid., p. 503.

THE APPLICATION OF THE SENATORS.

On February 25, 1858, Mr. Crittenden presented to the Senate a letter from James Shields, one of the Senators elect from Minnesota. Mr. Shields held that the Enabling Act authorized the people of Minnesota to form a State constitution, "and to come into the Union;" and that, the provisions of the act having been complied with, Minnesota was ipso facto a State in the Union, and that no further action in the matter on the part of Congress was necessary. This being the case, he asked to be allowed to assume his seat. Mr. Crittenden presented the credentials of Mr. Shields, and asked that he be sworn in.

Johnson of Arkansas, and Mason and Hunter of Virginia, contended that there was no such State as Minnesota recognized by the United States Senate; while Crittenden, Simmons of Rhode Island, and Pugh of Ohio, held to the contrary. It was cited, by way of precedent, that the senators and representatives from Indiana took their seats before the State was formally admitted, and that in the case of Ohio no formal act of admission was passed at all, a committee being appointed to examine her constitution. Mr. Brown of Mississippi presented the clearest and best argument in the case, in which he asked, Who accepted the constitution of Minnesota? Who has pronounced it republican in form? Who guarantees to us that she has complied with the provisions of the Enabling Act? These questions were unanswered and unanswerable from the point of view of the opposition. Robert Toombs offered a resolution, which was adopted, referring the matter to the Judiciary Committee, "with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws." On March 4, 1858, Mr. Bayard, in behalf of the Committee, reported "that Minnesota is not a State of the Union."

Nothing more was heard of the Minnesota bill in the debates of Congress until March 23, 1858. Although the constitution of Minnesota was sent to the Senate before the Kansas con-[172]-stitution,[3] the southern senators were successful in holding the

[3] The Constitution of Minnesota was transmitted to the Senate on January 11, 1858; that of Kansas on February 2, 1858.

former in abeyance until the bill for the admission of Kansas under the Lecompton or Slavery constitution was passed by the Senate. On this date, March 23, Mr. Douglas asked that the bill be considered, and thought there should be no opposition inasmuch as the Kansas question was now disposed of as far as the Senate was concerned; but Mr. Gwin pressed the claims of the Pacific railroad bill, and the remainder of the day was passed in fruitless debate.

On the following day, March 24, Mr. Doolittle of Wisconsin said that, since there had been a tacit understanding that the Minnesota bill was to be considered immediately after the Kansas matter was disposed of by the Senate, good faith to the friends of Minnesota demanded that the bill be taken up at once. Mr. Gwin again objected in favor of his Pacific railroad bill, and was supported by Bigler of Pennsylvania, Broderick of California, and Mason of Virginia; while Wade and Pugh of Ohio, Stuart of Michigan, Seward of New York, Bright of Indiana, Crittenden of Kentucky, and Johnson of Tennessee, contended for the priority of the Minnesota bill. Mr. Mason thought the Senate should suspend action upon the Minnesota bill until the House had disposed of the Kansas question. Mr. Seward scouted the idea as absurd. Wade and Crittenden held that the admission of men entitled to seats in the Senate should take precedence of all other business.

After this discussion, the Senate, by a vote of 30 to 16, voted to take up the Minnesota bill.

THE BILL IN THE SENATE.

The bill as a whole differed little from the usual form for such acts, but there was one feature which caused a division in the committee and provoked an animated discussion in the Senate. The census provided for by the Enabling Act was not finished, and the returns from the work already done upon it were not above suspicion. This led to serious embarrassment in determining the representation in the House. The bill, as reported by Mr. Douglas, provided for one representative for the present and as many others as the completed census should show the State entitled to. Mr. Douglas explained [173] that he opposed this feature of the bill in the committee, but had to accede to it in order to get the bill before the Senate.

The new constitution of Minnesota provided for three representatives, and three had already been elected. Mr. Douglas was in favor of allowing them all to take their seats at once. Others were opposed to such an action. Various amendments were proposed. Douglas was supported by Pugh, Doolittle, and others; while Green, Brown and Wilson argued for two representatives, and Mason, Collamer and Crittenden favored one only. Some wished to refer the matter to the House for decision, but others held that the representation of a State should be decided by Congress and not by the House alone. Some proposed to strike out the section entirely; which, as Mr. Green showed, would be equivalent to allowing three representatives as provided in the State constitution.

Mr. Douglas called attention to the embarrassment which would ensue in determining which one or two of the three elected should be admitted. Mr. Pugh thought that that difficulty might be obviated by admitting first the man who received the highest vote, while others held that the three were now on the same basis and that the majorities received were matters of no significance. Mr. Bayard would have Congress decide upon the number of representatives, but would leave it to the House to determine which one or two of the three elected should be admitted in case all were not.

Mr. Jones of Iowa argued for three representatives on the ground that less than that number would be unable to attend to the interests of the new State. The simple answer to this was that population is the basis of representation and not the amount of business to be transacted.

Mr. Wilson proposed to allow one representative now, and to have a new census taken at once in order to determine the number of additional representatives, if any, to which the State is entitled. Mr. Toombs proposed to allow three until the new census was completed; and then, if it turned out that the State was not entitled to them, one or two of them should be retired. The difference between these two propositions seems slight, but Mr. Iverson of Georgia objected strenuously to Wilson's proposal, because, as he said, that plan involved a new election for the one or two additional members to which [174] the state would likely be entitled. The reason is clear.

Mr. Iverson was a Democrat, and the three representatives elect from Minnesota were also Democrats. A new election might result favorably to the Republicans. You may tell me that my fears are imaginary, said Iverson, and perhaps they are; "but I fear there is a cat under the meal tub, and I am not willing to risk it."

The matter was compromised by voting to allow Minnesota two representatives until the next apportionment, which was all that the State could in equity demand, for reasons to be noted directly. The census as far as completed showed a population of about 140,000 souls. Mr. Douglas estimated the population of the counties from which no returns had been received at 10,000. Under the apportionment law then in force, each State was entitled to one representative for 93,420 inhabitants. A population of 150,000 would, as Mr. Douglas himself admitted, legally entitle the State to only one representative, since a major fraction did not at that time necessarily entitle the State to an additional member. But the integrity of the census was impeached. It was held that the pay of the deputies was inadequate, and that therefore the work was not thoroughly done. A letter was presented from the United States marshal reciting the many difficulties under which the census was taken.

Some of the supporters of Mr. Douglas would have preferred to brush aside the census entirely and be governed by other estimates. Some in arguing for three representatives took the number of votes cast for State officers 40,000 in round numbers and multiplied it by six to obtain an estimate of the population. This multiplier is too high for any frontier country. Mr. Collamer aptly hit off this method of calculation. He said it reminded him of the method employed by a man who wanted to know the weight of his hogs, but had no scales. He put a large stone on one end of a slab to balance the hogs at the other and then guessed at the weight of the stone. Even 240,000 inhabitants were not enough for three representatives. In a running debate upon this subject between Douglas and Mason the latter had decidedly he best of the argument. Mr. Fitch of Indiana claimed that no mis-[175]-take could be made by allowing Minnesota three representatives as her population would soon entitle her to that number, if, indeed, she had not sufficient already, to which it might be said that present and not prospective population should be made the basis for representation.

During the above discussion, which lasted for several days, various other objections to the admission of the State were urged. Mr. Brown announced that he did not approve of the constitution, but would vote for admission to keep faith on the slavery question. He was particularly averse to allowing aliens and persons of mixed white and Indian blood to vote. Mr. Trumbull stated that the State legislature of Minnesota was passing laws, and that they were being approved by the Territorial governor. Such legislation as this, he added, would be held a nullity in any court in Christendom. He held also that according to the constitution the members of the House of Representatives of Minnesota were elected for life; [4] a feature, he continued, not in harmony with republican institutions.

It was with great difficulty that Mr. Douglas was able to obtain the attention of the Senate for consecutive days upon the Minnesota bill. One of the principal causes of delay was the Kansas bill, from which the House struck out all after the enacting clause, and submitted and passed a substitute. The Southern members forced this substitute upon the attention of the Senate, and considerable time was spent in agreeing to disagree upon it. The debate upon the Kansas question was so intensely sectional that it left a bad atmosphere for the discussion of other matters. Finally, a considerable time was devoted to the Minnesota bill on April 6 and 7, and the vote upon it was taken on the latter date.

Various objections were made on the ground that Minnesota had not complied with the provisions of her Enabling Act. The split convention was held to be illegal. The representatives were elected at large, while the law of Congress required that they should be elected by congressional districts. It was held that more delegates were elected to the [176] State constitutional convention than the Enabling Act permitted.[5]

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[4] The constitution does not place any definite limit to the terms of office of the representatives. Incidentally a term of two years may be inferred. Constitution of 1857 in Debates of the Constitutional Convention, (Democratic Wing) p. 654 and (Republican Wing) p. 607.

[5] Section 3 of the Enabling Act provided that two delegates be chosen for every representative to the territorial legislature. The Minnesota authorities construed the word "representative" to apply to Councillors as well as to Representatives proper. This construction made a convention of 108 members. Some of the senators insisted that

Anthony Kennedy, a Unionist Whig senator from Maryland, opposed the admission of the State because of the alien suffrage feature in her constitution, which, he held, was contrary to the Constitution of the United States and against the interests of the South. He was opposed to the "squatter sovereignty" feature because it destroyed the equilibrium of the Senate. He quoted from the speeches of Calhoun at length to establish the unconstitutionally of alien suffrage. He held that only citizens of the United States could constitutionally vote, and that the States were compelled to allow such citizens to vote within their limits. Mr. Johnson of Tennessee took exception to this latter statement that a State was obliged to allow a United States citizen to vote and clearly showed the absurdity of it. By way of acknowledging his error Mr. Kennedy, with due senatorial suavity, maintained the correctness of his position and assured Mr. Johnson and the Senate that he would come to that point directly; which, of course, meant, according to congressional interpretation, that he would take great care not to come to it at all.

Mr. Brown became sarcastic in decrying Indian suffrage. "All you have to do," he said, "is to catch a wild Indian . . . . give him a hat, a pair of pantaloons, and a bottle of whisky, and he would then have adopted the habits of civilization, and be a good voter." [6] This thrust elicited from Sam Houston, the foster child of the red man, an eloquent defense of that much abused personage.

The vote upon the bill was finally taken on April 7, 1858 and resulted in 49 yeas and 3 nays; Clay of Alabama, Kennedy of Maryland, and Yulee of Florida, voted in the negative. [177]

THE BILL IN THE HOUSE.

Since the Enabling Act was passed, a new House had been organized and a new Speaker elected. G. A. Grow of Pennsylvania was replaced as chairman of the Committee on Territories by Alexander Stephens of Georgia, and it was to the care of the latter

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the word "representative" should be construed as meaning a member of the lower house of the territorial legislature, thus making a convention of only seventy-eight members. The latter is, of course, the more plausible construction.

[6] Cong. Globe, vol. 45, p. 1514.

that the bill was now entrusted. On the day after the passage of the bill by the Senate, a message was sent to the House informing that body of the Senate's action. Mr. Stephens made repeated but unsuccessful attempts to have the bill taken up, but finally succeeded in his efforts on May 4.

The old question of representation came up, and much the same line of argument was pursued as in the Senate. Mr. Stephens wished to allow Minnesota three representatives, and was supported by W. W. Kingsbury, then the territorial delegate from Minnesota. Mr. Garnett of Virginia contended for one; but John Sherman of Ohio was the most determined of all in his opposition to the admission of the new State, being the most severe, acrimonious and partisan in his strictures upon her.

In place of the bill then before the House, Sherman offered a substitute, the preamble of which recited that the constitution of Minnesota "does not conform with the constitution and laws of the United States." He would remand the entire constitution back to the State for revision. No legal convention, he held, ever sat in Minnesota; it was a "double-headed mob," composed of 108 instead of 78 delegates; and the representatives were not elected by districts, but at large. He could see no reason for this unless it was to allow uncivilized Indians to vote for three representatives instead of one. In the hurry of their miserable strife, he said, no tenure of service was set for representatives; it was a predetermined plan to hold office as long as possible. The utter absurdity of this latter statement needs no comment and deserves no notice. Albert G. Jenkins of Virginia answered Sherman's arguments *seriatim* and with considerable ability.

Indian suffrage was severely denounced by Mr. Garnett. No such provision, said he, was ever heard of except it be in "Nicaragua or some such pretended republic of South Amer-[178]-ican barbarians;" the makers of such a provision would not seem, he added, to be "eminently capable of 'enjoying the rights of citizenship.' "[7] Mr. Blair of Missouri continued in much the same strain. "At one of the precincts," he said, "one pair of breeches was

[7] Cong. Globe, vol. 45, p. 1953.

obtained, and thirty-five Indians were successively put into it, and in that way it was ascertained that they had adopted the habits of civilized life." [8]

Mr. Anderson of Missouri, in arguing against the alien suffrage feature, voiced a sentiment which many others doubtless had in mind, but were too politic to express. He said: "I warn gentlemen from the South of the consequences that must result from maintaining the right of unnaturalized foreigners to vote in the formation of State constitutions. The whole of the Territories of this Union are rapidly filling up with foreigners. The great body of them are opposed to slavery. Mark my word: if you do it, another slave State will never be formed out of the Territories of this Union. They are the enemies of the South and her institutions." [9] His words were as prophetic as they were candid, for another slave State was never admitted. After quoting from a speech said to have been made by John C. Calhoun in opposition to the admission of Michigan, Mr. Anderson became grandly eloquent in his argument against the constitutionality of alien suffrage.

Mr. Davis of Maryland, and Mr. Smith of Virginia, also opposed the alien suffrage feature of the bill. The latter made one of the longest speeches in the entire discussion, in which he utterly confused citizenship and suffrage, and which he interspersed with quotations having no application whatever to the point at issue. One of his colleagues, Mr. Millson, reminded him of the fact that his strictures upon the alien suffrage clause of the Minnesota constitution could, with equal force, be applied to his own State, Virginia, where un-naturalized foreigners could vote. Mr. Bliss of Ohio clearly showed that the fundamental error of Mr. Smith lay in considering the term "citizen" and "elector" as synonymous, when they are not so. Bliss admitted the inexpediency, but not the [179] unconstitutionally, of allowing aliens to vote. He considered the irregularities so emphatically dwelt upon by his colleague, Mr. Sherman, as matters of no vital importance. Mr. Ricaud of Maryland quoted from Calhoun's now famous Michigan speech to the effect that States

[8] Ibid., vol. 45, p. 1953.
[9] Cong. Globe, vol. 45, p. 1980.

could not naturalize, a fact which no one since the foundation of the government has disputed, a point which the most ardent advocate of State rights never claimed.

Mr. Stephens made little of the irregularities over which Mr. Sherman had previously pounded the pulpit so fiercely. He held it sufficient that the constitution of the proposed State was republican in form and expressed the will of the people. He held that even the election of representatives for life would not make the constitution anti-republican, since many States had elected their judiciary for life and no objection was made. Mr. Stephens then turned his attention to the famous speech of John C. Calhoun, from which his opponents had derived so much inspiration and argument. It must have greatly lessened the influence of this speech, said to have been delivered in opposition to the admission of Michigan, when Mr. Stephens remarked that the speech was not to be found in the Congressional Globe, and that the records showed no objection on the part of Mr. Calhoun to the alien suffrage feature of the Michigan constitution, and that in another instance he voted for alien suffrage. Mr. Stephens was refreshingly clear in distinguishing suffrage from citizenship. In speaking of the difference, he said: "Great confusion seems to exist in the minds of gentlemen from the association of the words citizen and suffrage. Some seem to think that rights of citizenship and rights of suffrage necessarily go together; that one is dependent on the other. There never was a greater mistake. Suffrage, or the right to vote, is the creature of law. There are citizens in every State of this Union, I doubt not, who are not entitled to vote. So, in several of the states, there are persons who by law are entitled to vote, though they be not citizens." [10]

The discussion was thus prolonged, with the interposition of other business, until the eleventh of May. On this date Mr. Sherman's substitute was rejected by a vote of 51 to 141, [180] and the bill was passed as it came from the Senate, the vote being 157 to 38.[11] The Speaker and the President signed the bill on the same day that it was passed by the House.

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[10] Cong. Globe, vol. 46, p. 2059.

[11] The opposition came equally from the North and South, and was politically as follows: Republicans, 12; Americans, 11; Whigs, 9; Democrats, 3; Free-Soilers, 2; Unionist, 1.

V. THE ADMISSION OF THE SENATORS.

The State having been admitted, the next thing in order was the admission of the senators and representatives. This is usually a merely formal process devoid of public interest; but, in this case, unexpected opposition was developed.

On May 12 Robert Toombs presented the credentials of Mr. Henry M. Rice as a United States senator from Minnesota, and moved that the oath of office be administered to him. Mr. Harlan of Iowa then presented a communication from certain settlers on the Fort Crawford Reservation in his State, setting forth that Henry M. Rice, as agent for the Secretary of War, had charged them $1.50 per acre for their land, instead of $1.25 as directed by the Secretary of War, and that he had refused to receipt to them for more than $1.25 per acre. Some other charges of fraudulent dealings were also made. Mr. Harlan presented these allegations to the Senate, but made no motion. Mr. Brown thought the charges no bar to the admission of Mr. Rice, but proceeded to object on other grounds. States, and not Territories, he held, can elect senators; and because Minnesota was a Territory when Mr. Rice was elected, he affirmed that the election was null and void.[12] Mr. Seward characterized this objection as psychical rather than practical. Mr. Benjamin called the attention of the Senate to the fact that they would find upon their desks a communication from the War Department, in which Mr. Rice explained that the twenty-five cents per acre extra were expended for the interests of the settlers and cheerfully paid by them. He characterized Mr. Harlan's action as unusual, discourteous, and even cruel. Mr. Toombs made a few remarks about the judgment appropriate for a senator and a gentleman, and requested a vote. Mr. Pugh suggested that, [181] if Mr. Harlan's high standard of morality made it impossible for him to occupy a seat in the Senate with Mr. Rice, there was a very simple remedy, to resign. Jefferson Davis came to Mr. Harlan's rescue, and explained that that gentleman was simply acting for his constituents.

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[12] Senators had in other instances been elected before the formal act or admission was passed.

Mr. Rice was then sworn in. Mr. Toombs next presented a resolution of the Minnesota legislature giving the long term to Mr. Rice and this was referred to the Judiciary Committee. Mr. Rice now stated that he was taken entirely by surprise by the charges preferred by Mr. Harlan, and was not prepared to enter into an elaborate defense. He stated, however, that he had acted in strict accordance with the instructions of the Secretary of War, and that if any fraudulent act should appear upon investigation he would resign his seat in the Senate.

The oath of office was then administered to James Shields, the other senator from the new State.

Two days after his admission, Mr. Rice moved that an investigation be made into the charges preferred against him by Mr. Harlan. The motion was carried, and the matter was referred to the Committee on Military Affairs. On June 9, 1858, Jefferson Davis in behalf of that committee made a report completely exonerating Mr. Rice. Mr. King and Mr. Wilson did not concur in the report, however, as they considered the method of selling public lands worthy of condemnation. Mr. Wilson was careful to explain that he imputed no criminality to Mr. Rice. The report was adopted on motion of Mr. Davis.

VI. THE ADMISSION OF THE REPRESENTATIVES.

On May 13, 1858, Mr. Phillips of Pennsylvania presented the credentials of William W. Phelps and James M. Cavanaugh of Minnesota and moved that they be sworn in as members of the House of Representatives. The motion encountered an uncompromising antagonist in John Sherman. He held that the credentials of the two men were signed by Samuel Medary, governor of the Territory of Minnesota, but that they should be signed by the governor of the State under the State Seal. He said that Mr. Medary was then postmaster at [182] Columbus, Ohio, and could by no manner of means certify to the election of representatives from another State. Where, he asked, are the credentials of the third man elected? [13] He contended that there was no legality in tossing up a

[13] Mr. Washburne of Illinois stated during the debate that the three men elected,

copper to determine which men should be admitted. He held their election entirely void, and insisted that Minnesota should have no representative in the House until after the next regular congressional election.

On motion of Mr. Millson of Virginia, the credentials were referred to the Committee on Elections with instruction to inquire into the rights of Messrs. Cavanaugh and Phelps to seats. On May 20, 1858, Mr. Harris of Illinois, in behalf of the majority of the committee, submitted a report favoring the admission of the representatives, with the proviso that such admission "should not be construed as precluding any contests of their right to seats which may be hereafter instituted by any persons having the right so to do." [14] On May 22 printed copies of the majority and minority reports were submitted. The majority report held that the Enabling Act authorized the election of the representatives before the actual admission of the State; that there were precedents for election by general ticket instead of by congressional districts; and that the fact that three were elected was immaterial, since credentials were presented for only two.

The first minority report was signed by Ezra Clark (Am. Rep.) of Connecticut, James Wilson (Rep.) of Indiana, and Jno. A. Gilmer (Am.) of North Carolina, and held the election void because it took place while Minnesota was yet a Territory. It held that the precedents for such an election were fit only to be reversed and expunged. It held further that there was no way known to law by which two of the three elected could be designated, and that the certificates of election presented were mere nullities because not signed by any State officer. The recommendation was that Messrs. Cavanaugh and Phelps be not allowed to qualify.

The second minority report was signed by Israel Washburne, Jr., of Maine, who came to the same conclusions [183] reached by Messrs. Clark, Wilson and Gilmer, but by a somewhat different course of reasoning. Mr. Washburne stated that the constitution of the State

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Cavanaugh, Phelps, and Becker, had cast lots to determine which two of them should have seats in the House. Mr. Becker was unsuccessful, hence his credentials were not presented.

[14] Cong. Globe, vol. 46, p. 2275.

provided for three representatives, while the Act of Congress restricted the number to two; therefore, he continued, if the constitution is valid, all three are elected; if invalid, none is elected. He further stated that to allow candidates to decide who shall retire is to transfer the election from the people to the candidates.

After a discussion in which the signers of the various reports were the principal participants, the report of the majority was adopted, and Messrs. Cavanaugh and Phelps were sworn in, May 22, 1858. Thus was the North Star State, after a struggle extending from December 24, 1856, to May 22, 1858, enrolled among the American Commonwealths and duly represented in both branches of Congress.

VII. THE SEAT OF THE DELEGATE.

There was a difference of opinion as to who should represent in the House that part of the Territory of Minnesota not included in the new State. W. W. Kingsbury and Alpheus G. Fuller contended for that honor. On May 27, 1858, Mr. Cavanaugh presented a resolution reading as follows: "Resolved, That the Committee of Elections be authorized to inquire into and report upon the right of W. W. Kingsbury to a seat upon this floor as Delegate from that part of the Territory of Minnesota outside the State limits."[15] Mr. Harris of Illinois presented the credentials of Alpheus G. Fuller as delegate from the same Territory.

The whole matter was referred to the Committee on Elections. On June 2, 1858, Mr. Harris of Illinois, chairman of that committee, submitted the majority report, holding that Mr. Kingsbury was legally elected delegate on October 13, 1857, and that the admission of a State formed out of part of the Territory did not annul that election. The case of H. H. Sibley was cited. Mr. Sibley was elected delegate from the Territory of Wisconsin after the State of Wisconsin was ad-[184]-mitted. He was elected from that portion of the Territory not included in the State, and was allowed to take his seat by a vote of 124 to 62. In conclusion, the report recommended that Mr. Kingsbury be allowed to retain his seat, and that the memorials of Mr. Fuller be given no further consideration.

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[15] Cong. Globe, vol. 46, p. 2428.

A minority report, signed by Messrs. Wilson, Clark, and Gilmer, decided in favor of Mr. Fuller. This report stated that Mr. Kingsbury was elected by the voters of the territory now comprising the State, and that those living in that part of the Territory not included in the State were not allowed to vote; but this was denied "upon good authority" in the majority report. It was also held that Mr. Kingsbury lived in the State of Minnesota, not in the part of the former territory left outside the State. Mr. Fuller, in the course of a long letter said that he came "without form of law, but on the inherent principle of self government and protection."

Mr. Harris contended that it was not necessary for the delegate to live in the Territory which he represented. Israel Washburne of Maine supported Mr. Harris, declaring that there was both a State and a Territory of Minnesota. Mr. Jones of Tennessee held that there was no Territory of Minnesota, and hence that no one was entitled to a seat as delegate. After considerable discussion, the majority report was adopted, and Mr. Kingsbury retained his seat until March 3, 1859. ■

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