TOOMBS OF GEORGIA CHAMPIONS HARLAN OF IOWA.

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Perhaps no name in the entire list of southern leaders was at the outbreak of the War of the Rebellion more execrated by the people of Iowa than that of Robert Toombs, then Senator from the State of Georgia, and later Secretary of State for the Southern Confederacy, and later still Major-General in the Confederate army. The foolish boast which Toombs was charged with having made—that he would call the roll of his slaves at the foot of Bunker Hill monument—had done much to crystallize northern feeling against the Georgia Senator.

Strangely enough, there is an incident in his senatorial career which connects the distinguished Georgian with Iowa and with Iowa's great Senator, James Harlan, in a way so complimentary to the one and so creditable to the other that it is a pleasure to recall, and to retell in few words, the story as it is found in detail in the *Congressional Globe.*

On December 15, 1856, there occurred a brief debate over the reference to the Committee on the Judiciary of the credentials of James Harlan, together with the accompanying resolutions of the Iowa Senate to the effect that Mr. Harlan had not been duly elected Senator and, therefore, was not entitled to a seat.

Mr. Harlan, in his own behalf, opened the discussion with the disclaimer of any more ambitious purpose than the presentation of a brief detail of the facts leading down to the resolution referred to and a simple statement of the law which should control the Senate of the United States in its discussion as to his right to a seat. After quoting the law, both

State and National, bearing upon the question at issue, he recited the history of the case and read from the *Journal* of the Iowa House the message from the Iowa Senate, and the report of the several sessions of the joint convention of the two houses, showing that he was regarded as having received a majority of the votes cast. He also pointed out the fact that a certificate of election had been made out and duly attested, and that thereafter the joint convention had adjourned *sine die*.

Mr. Harlan then proceeded to present a matter which, as he declared, was more personal to himself than important to the Senate. For a year or more he had been permitted to occupy a seat in the United States Senate with this protest lying on the president's table. He had not called it up nor requested any one else to do so—regarding the whole procedure as purely political, being an effort on the part of a minority in his State to defeat the will of the majority. He maintained he had held his seat not by sufferance, but as a legally elected Senator of the United States. In this opinion he had been sustained by the best legal minds in his State, including the chief executive (Governor Grimes) and the judges of the Supreme Court. He quoted from Chief Justice George G. Wright, who expressed the opinion that Mr. Harlan's election was not without constitutional authority. Mr. Justice Woodward concurred in this opinion and went so far as to say: "The convention being regularly constituted, I did not think the withdrawal of a number of the members less than a majority could dissolve it." And he added farther on: "Any party can, at any time, destroy an election if such means will do it."

A paper signed by William Vandever, clerk of the Supreme Court of Iowa, was then read by Mr. Harlan certifying that Mr. Justice Isbell, elected with Mr. Harlan by one and the same convention, had qualified and entered upon his duties and was in uninterrupted possession of his office. Mr. Harlan closed the record by quoting Governor Grimes as saying that, believing Mr. Harlan was legally elected, he could not believe there was a vacancy, or that there could be one, let the action

of the Senate be what it might. He would not, therefore, feel himself authorized to appoint any one, nor should he convene the General Assembly unless some exigency should arise that was not then contemplated.

Mr. Harlan said he would submit no argument in his own favor—he did not deem it necessary. He had perfect confidence in his hold upon the majority in his State. He said: "In the event of an adverse decision, should the people of my State desire my presence here, I doubt not they will find means to return me; if otherwise, they will have no difficulty in selecting from her citizens an abler and better man." Though he could find among the members of the Committee on the Judiciary not one political friend, he declared that he would not oppose the reference of the subject to that committee. He would not by any word of his "aid to make a record out of which a supposition might grow that in the Senate of the United States the determination of any question like this could, by any possibility, be influenced by party feeling."

Senator Bayard, of the Committee on the Judiciary, moved that the case be referred to a special committee. He recalled Mr. Harlan's former objection, and inasmuch as the allegation had been made that the Committee on the Judiciary was composed entirely of members opposed to Harlan politically, he thought it right and proper that it should be referred to a special committee in which the Senator might have due representation. This question was discussed at length by Senators Bayard, Seward, Butler, Hale, Fessenden, Toucey, Hunter and Crittenden. Here arose, perhaps, the first public acknowledgment of the necessity of a Committee on Privileges and Elections. The question of reference to the Committee on the Judiciary was finally put to a vote, which resulted in thirty-one yeas and thirteen nays, and the case was so referred.

On the fifth day of the following January (1857), Senator Butler, Chairman of the Committee on the Judiciary, reported on the Harlan election case. The report declared that the majority of the committee had reached the conclusion that the sitting member, Mr. Harlan, had not been duly elected

and that his seat should be declared vacant. Senator Butler asked that the report be received and printed and a day be assigned for its consideration.

Here Senator Toombs enters upon the scene. He hoped the minority of the committee would be allowed to file its reasons for dissent and have them printed also, thus giving notice that he intended to oppose the unseating of the Iowa Senator. On the following day, on the insistence of Mr. Harlan, the Senate proceeded to the consideration of the special order, the report of the Judiciary Committee on the Harlan case. Mr. Butler opened the debate with an elaborate argument based on the law and the facts. At the outset he declared that the case was not without its difficulties, involving grave considerations affecting the organization of the Federal and State governments. His review of the case may be briefly summarized.

He held that the joint convention of the General Assembly of Iowa had not been duly organized under the law. He related how, after eighteen ineffectual ballots and three or four adjournments, the convention was to meet on January 6, 1855, at 10 o'clock A. M.; but when the hour arrived, a committee from the House sent to invite the Senate to meet in joint convention, found and reported that the Senate had adjourned. An order was then made that the Sergeant-at-Arms should summon the Senators—"not the Senate *eo nomine*, but should go out into the taverns and summon the Senators." They were so summoned and a minority of that body presented themselves. The President of the Senate was superseded by a president *pro tem,* who appointed a teller other than the one who had served in that capacity. Under these circumstances it was determined to go into an election. It was more mass meeting than convention, for the Senate was not there in a body, nor was there a quorum of the Senators. In fact, the election was made by the House with a few Senators, not brought there by any communication with the Senate, decidedly against all precedent. He said all the authorities agree that legislatures ought, in fact, to exercise the high function of electing United States Senators by a

concurrent majority. He maintained that, the House finding no response from the Senate, it was the Speaker's duty to adjourn the convention to another day. This informal body went through the form of electing a President *pro tem,* and the Senator chosen presided, whereas an act of 1847 says that in the absence of the President of the Senate the Speaker of the House shall preside. Another "fatal mistake" was the substitution of another teller. The sending out of the Sergeant-at-Arms to summon the Senators gave that officer the power to select such as would prove his friends to the exclusion of others who might not do as he wished—"a fatal precedent."

Senator Toombs then took the floor as the representative of the minority of the Committee on the Judiciary in favor of permitting the incumbent to remain as the accredited representative of his State. He declared at the outset that the only contention was upon the point that the Senate had no knowledge of the joint convention. He argued from the wording of the Constitution of the State of Iowa that the legislature had full control and regulation of the details of electing a United States Senator, except as Congress might make or alter such regulation, and since Congress had not exercised the power vested in it the legislature of Iowa had not gone beyond its limits. The joint convention, constituted according to law, had the power to prolong its own existence by its own adjournment from time to time until some person should receive the majority of the votes of its members. The factious opposition of the Iowa Senate was defeated by the wisdom of the legislature. The members of the Senate were present when the adjournment took place; the Senate recorded the adjournment in its journal; but, on the morning following, knowing of its appointment, it adjourned in disregard thereof. Nevertheless, the joint convention was held in pursuance of call and a majority, not a minority, of its members convened and proceeded to choose a Senator.

Referring to the point that the Senate was not there as a Senate, Senator Toombs said it could not be, under the law of Iowa, since the joint convention consisted of the members

of both branches as one body; but the joint convention was there. According to *Jefferson's Manual*—the rule in Iowa in the absence of other rules—a majority of members of that convention, even if there had not been a single Senator present, was competent to elect. In this connection Senator Toombs was assailed with a running fire of interruptions from his Democratic associates, Senators Butler, Bigler, Bayard and others, for all of whom he had ready answers, revealing the wide range of his reading and the keenness and alertness of his intellect.

As to the point that the President *pro tem* had usurped the Speaker's prerogative, Senator Toombs said the Speaker of the House did preside, putting the questions in due form. During the meeting a President *pro tem* was named. To obviate any difficulty both the Speaker and the President *pro tem* signed all the proceedings. The signature of the President *pro tem* was merely surplusage.

As to the tellers, they were not, as the Senator from South Carolina (Mr. Butler) had maintained, judges of the election: their sole function was to count the votes, report, and certify.

Replying to a question from Senator Pratt, he said that after the joint convention is legally convened the presence of the Senators is presumed and their absence cannot affect the question so long as there is a quorum. Here we find a precedent for the now historic ruling of Speaker Reed as to what shall constitute a quorum.

In reply to a question from Senator Clay, the Georgia Senator said that a majority of one in the Iowa Senate was opposed to going into an election. They were of different politics from the majority of the General Assembly. The legislative power in Iowa was vested in the General Assembly. A majority of that body was present, but a majority of one of the branches of that body was opposed to the majority of the General Assembly and would not join in the election. That, he declared, was the whole case.

"The question is, whether the factious conduct of a few men who were elected to the Senate of Iowa, and who ought

to be condemned by the people, and not countenanced by this body, shall by illegal conduct prevent the exercise of their constitutional rights and duties by a majority of the legislature, or defeat their legally declared will? . . . That is the great fact, the fundamental fact in this case. . . . It is a rule of law that no person can avail himself of his own wrong; and I say that these persons should not be allowed to avail themselves of their own wrong to defeat the will of the people of Iowa.''

Senator Foot interrupted to state that in fact there was a majority of the Iowa Senate present in the convention. Fifteen Senators actually voted; sixteen consituted the majority; and Mr. Ramsay and Mr. Thurston, of the other party, were present, but requested not to be considered members of the joint convention. Senator Toombs said he had noted the corporeal presence of the two Senators named, but would make no point on that fact.

In response to a question from Senator Bayard, Mr. Harlan said that there were thirty-one Senators and sixty-nine Representatives in the General Assembly of Iowa—the total membership being one hundred, but one seat was vacant by death and another by sickness, leaving ninety-eight members competent to vote.

Senator Toombs, resuming, said the election lacked ''nothing even of form except what necessarily resulted from the non-performance of their duties by the very persons who are now protesting against it.'' He concluded his exhaustive argument in these words: ''The question is, whether the Senate of the United States will permit this constitutional duty to be disregarded for the benefit of a faction against the Constitution of the United States—against the rights of Iowa, and of the sitting member? *I say not!*''

After further debate Senator Toombs moved an amendment to the resolution of the majority of the committee to strike out all after the word ''*Resolved*'' and insert: ''That James Harlan is entitled to his seat as a Senator from Iowa.'' The Senate then went into executive session.

On the 9th of January discussion of the question of unseating Senator Harlan became general and was participated in by Senators Seward, Stuart, Pugh, Brown, Toucey, Fessenden, Hale, Butler and Douglas. Mr. Harlan was frequently called upon to reply to questions of fact.

It may be noted in passing, that in the course of the debate Senator Douglas took occasion to pay a decidedly left-handed compliment to Mr. Harlan. He said: "I feel not the slightest personal interest as to whether the Senator shall remain or go back. If I have any impression, I think I would rather trust him than run the risk of getting a worse man in his place if he went back."

The debate was continued on the 12th of January, Senators Mallory, Slidell, Adams, Benjamin, Trumbull and Houston taking part. The Toombs amendment entitling Senator Harlan to his seat finally reached a vote, eighteen Senators voting "yea" and twenty-seven voting "nay." The Senators voting "yea" were Bell* of New Hampshire, BELL of Tennessee, *Brown* of Mississippi, Collamer of Vermont, Durkee of Wisconsin, Fessenden of Maine, Fish of New York, Foot of Vermont, Foster of Connecticut, Hale of New Hampshire, HOUSTON of Texas, *Pugh* of Ohio, Seward of New York, *Slidell* of Louisiana, *Toombs* of Georgia, Wade of Ohio, and Wilson of Massachusetts.

The original resolution that James Harlan be not entitled to a seat was then passed by the vote of twenty-eight to eighteen, and Mr. Harlan was sent back to Iowa for a vindication. The vindication was not long delayed, for on the 29th day of January, seventeen days thereafter, Senator Trumbull "presented the credentials of the Hon. James Harlan, chosen by the Legislature of Iowa as a Senator from that State." The credentials were accepted without question and Mr. Harlan resumed his seat.

*Republicans in roman. Democrats in italics. Americans in capitals.

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