

sidered at one time doubtful whether a State could rightfully require inhabitancy in a particular district of the State as a qualification. In the case of *Barney vs. McCreery*, in 1808, the House of Representatives seem to have evaded a direct decision upon that point. There was conflicting evidence upon the fact of inhabitancy in the particular part of the district; and the House finally merely resolved "that McCreery is entitled to his seat."

Judge Story states his opinion thus: "In regard to the power of a State to prescribe the qualification of inhabitancy or residence in a district, as an additional qualification, there is this forcible reason for denying it, that it is undertaking to act upon the very qualification prescribed by the Constitution, as to inhabitancy in the State, and abridging its operation."

It is clear, I think, that the State cannot insist upon the division into Senatorial Districts, as of Constitutional right, and that the only sanction for the continued observance of the provision is in the comity and good faith of the Legislature. Whatever doubt may have been originally entertained as to the question of Constitutional law, has been long since dispelled on fuller consideration, and by the repeated and clear adjudications of Congress. The report of Mr. Bingham, from the Committee on Elections, in the House of Representatives, in 1856, adopted by the House by a vote of 125 to 5; and the decision of the Senate in the same year, affirming the right of Mr. Trumbull, of Illinois, to his seat in the Senate, by a vote of 35 to 8, establish the conclusion that a State, even by the most emphatic provision in her Constitution, "cannot add to the qualifications of a United States Senator or Representative prescribed in the Constitution of the United States." "Whoever possesses those qualifications is eligible."—Contested elections in Congress, 1834 to 1865, pp. 167 and 618. Such is the inevitable result of the fact, that the Constitution of the United States is the supreme law of the land, to every State, to every citizen, to Congress, and to every officer and department of the Government.

In reply to the last inquiry of your order, whether the Governor of this State is, or not, bound under the Act of Congress and the Constitution of this State to issue a certificate of election to the Hon. Wm. T. Hamilton as State Senator elect, &c. I respectfully submit that the third section of the Act of Congress of July, 1866, chapter 245, enacts, "That it shall be the duty of the Governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the Secretary of State of the State."