

of the majority of the committee is in substance nothing more than an announcement, in advance, of the determination of the committee to do its entire duty, if certain circumstances shall hereafter arise. It seems to the undersigned that if the committee has no present duty to discharge in the premises, such an announcement might have been postponed until the happening of the circumstances indicated. Indeed, the minority cannot help thinking, that the actual discharge of the duty itself would have been the most conclusive and satisfactory mode of establishing the purpose to perform it. Except, therefore, as an argumentative comment on the communication of Mr. Harris, which it embraces, the report has no parliamentary significance which the undersigned are able to discover. From the course of observation and argument adopted by the majority, the undersigned are compelled also gravely to dissent. It is very far from being true, they think, as a general principle of American law, that "the right to assume the functions of an elective office depends, in the first instance wholly and exclusively upon the returns or certificates of election," or that "those persons who have been duly returned and declared elected are always considered to be rightfully entitled to their respective offices, until their election is investigated and set aside." The principle thus assumed by the majority to be universal, applies only and of necessity, to legislative bodies.

As there is no exterior tribunal authorized to judge of the election and qualification of their members, it is manifest that they could never be organized, unless upon the basis of the *prima facie* evidence furnished by the returns. It is, therefore, indisputable, that the returns should be treated in the first instance as entitling the persons returned to their seats. But, in regard to other elective offices, there is no such rule, because there is no such necessity, and unless there be a special provision to the contrary, it is believed by the undersigned to be a principle of obvious soundness and general recognition, that the returns confer no immediate right to be inducted into office, except in those cases exclusively where that right has not been impeached. Where the election or qualification of the parties returned is disputed, the sole effect of the returns is to throw the burden of proof on the parties disputing them. This rule is nowhere more fully recognized than in the Constitution of this State, where special provision is made (Art. 4, sects. 11 and 12), for the immediate issuing of commissions to officers of certain enumerated classes, who shall appear by the returns to have been elected, leaving their election at the same time expressly open to contest, notwithstanding.

The undersigned believe it to be a correct principle of