

PETITION OF M. D. BALL FOR ADMISSION TO A SEAT IN
THE FORTY-SEVENTH CONGRESS AS A DELEGATE FROM
ALASKA.

FEBRUARY 28, 1882.—Referred to the Committee on the Territories and ordered to be
printed.

Mr. CALKINS, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the petition of M. D. Ball, asking to be admitted to a seat in the Forty-seventh Congress as a Delegate from the Territory of Alaska, submit the following report:

The memorial and credentials of Mr. Ball were by this committee referred to Hon. William G. Thompson and Hon. Gibson Atherton, as a subcommittee, who, after full and careful inquiry and examination, submitted their report.

While a majority of your committee are unable to concur in the conclusions as viewed by said subcommittee, or to assent to the resolution offered by them, the report of said subcommittee is so full and exhaustive in its statements of facts, and so replete with information concerning said Territory, its inhabitants, their condition, and their needs, that your committee beg leave to attach the same as an exhibit to this report.

Your committee recommend that the "memorial" of the people of Southeastern Alaska, appended to the petition of M. D. Ball, be referred to the Committee on Territories, to examine and report as to the necessity and advisability of establishing a Territorial government over the whole or any portion of the Territory of Alaska, and we offer for adoption the following:

Resolved, That M. D. Ball be not admitted to a seat in the Forty-seventh Congress as a Delegate from the Territory of Alaska until the Committee on Territories shall report thereon, and that the matter be continued until that time for further action.

EXHIBIT.

Your committee, to whom was referred the credentials of Hon. Motrom D. Ball, claiming to be the duly elected Delegate from the Territory of Alaska and entitled to a seat in this Congress as such Delegate by virtue of said certificate, report that on the 30th day of March, 1867, the Territory of Alaska was ceded to the United States by Russia, under treaty stipulations, and in consideration of the sum of \$7,000,000. The Territory thus acquired contains about 850,000 square miles. By the 3d article of the said treaty it was provided that "the inhabitants of the ceded Territory, according to their choice, reserving their natural allegiance,

may return to Russia within three years. But if they should prefer to remain in the ceded Territory, they, with the exception of the uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion." (*Statutes at Large, vol. XV, page 542.*)

The Territory was formally transferred to the United States on the 18th day of October, 1867. It will be seen by the unequivocal provisions of the article set forth above that the inhabitants of the Territory were suffered to retain their natural allegiance, with the right to return to Russia within three years from the date of said treaty. But if they remained in the Territory, all except the *uncivilized* native tribes shall be admitted to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. Your committee find in this provision an absolute and unconditional pledge on the part of the United States Government to secure to the inhabitants of that Territory, irrespective of the number, these natural and political rights, all so well in harmony with the genius and spirit of our American institutions, and so often indorsed by the people that a failure now to grant them and enforce them would justly meet with the reprobation of all good men and citizens. And our government has not usually delayed these plain duties.

Your committee cannot but feel that injustice has been done the Territory and its inhabitants, through a process of ridicule and flippant allusion to it as a worthless and unproductive land, and this, too, by many whose real knowledge of the Territory, its inhabitants or resources, ill fits them for any criticism worthy of attention, and your committee cannot believe that such things have given or now give emphasis to the great neglect of all these interests. The Territory contains within its geographical limits an empire of more than 2,000 miles from east to west, and more than 1,200 miles from its north to its south boundary. More than ten States as large as Georgia or Iowa, and a great part of which is less known to civilized man than Africa itself, it is indeed in a great measure the "*terra incognita.*" Still, it has been purchased by the government. It is a part of our possessions, and the time has come when a knowledge of its inhabitants and resources should be obtained. Your committee reluctantly state that all these promises and pledges made to the inhabitants have been continually neglected and almost wholly ignored. The act of July 27, 1868, section 1954 of the Revision of 1873, by its provision extends the laws of the United States over that Territory only so far as they relate to "customs, commerce, and navigation, and only these"; and even these provisions are rendered practically worthless by section 1957 of the same act, which provides that for all violations of this chapter shall be prosecuted in any district court in California, Oregon, or Washington. The nearest point from the settlements of Alaska to such court being over 1,200 miles, will at once disclose the impossibility of seeking redress in the manner prescribed, and even if the laws of the United States had all been extended over the Territory, and with no other mode of enforcing them, it would be a denial of speedy justice, if it could be obtained at all, and simply a mockery of those seeking it. Although more than fourteen years have passed since the acquisition of the Territory, yet no other or different provisions have been made by the government than those named, except to place at certain times the Territory under military or naval rule, and its inhabitants subjected to the arbitrary power of a single man,

and, without even the semblance of a trial, put into prison, and indeed without having committed any crime known to or created by any law in force in that Territory. One-man power is not a means of civilizing a people employed by this nation, nor do they believe in military rule, where the civil law can be enforced through the agency of properly organized courts, and an impartial trial by jury. These have been denied the people of Alaska.

Your committee submit an extract from a letter of the Secretary of the Navy to Commander H. Glass, United States Navy, commanding U. S. ship Jamestown, Sitka, Alaska, July 11, 1881, and hereto attached, and marked "Appendix," and made a part of this report.

Confine them "so long as in *your judgment*," &c., without a trial, in the absence of all laws except those already stated. Without a trial! Citizens of the United States thrown into prison and there kept at the sweet will and pleasure of some one military or naval officer! When the circumstances compel and make necessary such proceedings—and we must suppose that the emergency made imperative this action—does it not appeal in strong language to Congress for immediate action and adequate legislation by which the means of redress through courts will be placed within the reach of all the inhabitants of Alaska; for the order of the Secretary of the Navy, above quoted, recites that such order was issued, and, indeed, seems stated as an excuse for the unusual, illegal, and unconstitutional proceedings. "In the *absence of any legally constituted judicial tribunals*," &c., the Secretary was not to blame; Congress alone is responsible for this state of affairs.

Your committee quote the following from the memorial of the people of Alaska, so aptly stated that we feel justified in giving it as we find it, and make it a part of this report:

5. The Territory of Alaska embraces two large sections, not connected in interest or by direct communication. The western, comprising the coast westward from the Kenai Peninsula, and the Aleutian and Seal Islands, is the seat of the valuable fur trade, which supports its large population of natives, and contributes an important revenue of \$300,000 annually to the government. The late census shows its population to be 129 whites, 3,627 Russian civilized Creoles, and about 2,000 nearly civilized and 18,000 uncivilized natives. The whites are the agents of the fur companies at their several posts. The Creoles are a mild and peaceful race, whose rights of property and person are successfully guarded under the discipline of the Russian Church, of which they are all members, and whose temporal wants are thoroughly protected by the companies dependent on them for services necessary to their own trade, notably by the Alaska Commercial Company, which is obligated under its lease to sustain schools for them, and the interests of which are identified with their prosperity. The uncivilized natives inhabit the mainland, and follow their own laws and customs. There is no legislation asked, and no present necessity for civil government for this section.

6. The southeastern section is cut off from the west by a dangerous and harborless coast of 400 miles in length. It embraces the strip of mainland and all the contiguous islands, from Cross Sound to the Nass River—a country of near 500 miles in length by 150 in width, including waters teeming with choice fish, and islands covered with timber, rich in ores, and by no means wanting in valuable agricultural lands. Its population is shown by the Russian Church records to embrace nearly 300 of those "inhabitants" who elected "to remain in the ceded Territory," trusting to the promise of the treaty, and are now earnest in their demand for its fulfillment. By a late careful estimate there have been found to be about 900 other civilized residents, nearly all citizens, or desiring to become such, who have sought this section in pursuit of the various avocations it invites, chiefly in that of mining, in which the last summer's work has assured a success which is rapidly adding to their number. These require immediately laws whereby they may obtain title to property, courts to enforce rights and protect persons, and a Delegate in Congress cognizant of the nature of their wants, and authorized to represent them.

The evidence taken before the subcommittee shows that the memorialists have very cautiously avoided an overstatement as to their population and resources, and that these exceed, in fact, their estimates,

thus commending their assertions to our belief, as far as they go, and establishing their claim as to the rapid increase in their numbers now actually going on. The committee have had before them several gentlemen of unquestionable credit who have lately traversed the southeastern section of Alaska in the line of missionary labor or naval service during the last summer and fall. Their estimates place the population of that section at 1,350 at the lowest calculation, and establish the fact of the value of the mineral discoveries, and the assured increase of settlers. Further, it is shown that large preparations are actually in progress, by Oregon and California capitalists, to develop more extensively the timber and fishing resources of this section. And all the evidence shows the native population there to be intelligent, industrious, and easily civilized, 600 of their children being now enrolled in the mission schools, and the means of education and improvement eagerly embraced wherever offered.

Provision having been made for taking the census of Alaska, the attempt was begun in the summer of 1880, and the result is shown in the first paragraph just above quoted. The agent only succeeded then in compiling the population of the Aleutian Islands and that immediately contiguous to the coast of the Alaskan Peninsula. He started to continue the prosecution of his work in April, 1881, but was shipwrecked in the neighborhood of Mount Saint Elias, and held there among the Indians, without the means of escaping, till too late in the fall for further labor. The population of the vast interior of the country is, therefore, unknown, but has been variously estimated by those who have given attention to the subject. The lowest of these estimates, and which is manifestly below the fact, places the entire population at about 30,000. General Halleck, in his official report to the War Department, in 1869, puts the entire Indian population at 60,000, and the Russian officials claimed at the time of the transfer about 66,000, but the exact number cannot now be ascertained and can only be approximated.

The resources of Alaska are yet to a great extent unknown and but little developed, but your committee find that it is now definitely ascertained that, besides the valuable furs procured from the Alaska Commercial Company engaged in the seal-fur fisheries, the country abounds in other valuable fur-producing animals, and the government receives yearly from this source a revenue of over \$317,000; and it is stated in a late history of Alaska, just published by the Rev. Sheldon Jackson, a man of great learning, keen observation, and unbounded energy, that such land fur-bearing animals as the several varieties of the fox, mink, beaver, marten, lynx, otter, black bear, ermine, marmot, and muskrat, and that the yearly product therefrom aggregates \$1,000,000. It has a vast fishing ground of the finest food-fishes known, such as cod, halibut, salmon, mullet, &c. It has vast forests of yellow cedar, spruce, hemlock, and balsam-fir that densely covers the southeastern portion of the Territory, and is exceedingly valuable. Your committee have been particular to state at more length than usual these things for the purpose of bringing to the notice of the House the interests, resources, and possibilities of this Territory, and to awaken an interest in its behalf, which we deem of sufficient importance to demand immediate legislation. Its people ask protection and consideration, and to this end have elected and sent here a Delegate to represent them in this Congress and bring before Congress the wants of the Territory. He bears with him the credentials of election and a certificate that he was so elected, not bearing, it is true, the seal of a State, nor the signature of a governor. The people have neither; nor does the law require that he should present such a

certificate. He is not a *Representative* but a *Delegate*, delegated by the inhabitants, who have been guaranteed the rights of all other citizens, and to his qualification to be so admitted this House is the sole and only judge. Congress has done so before, and in support of this, ever unwilling to deprive any people of their civil or political rights, and where these rights exist, although for a time suspended, there must be a remedy, and that remedy is with Congress. At the second session of the Third Congress, 1794, James White presented his credentials claiming to be a Delegate from the territory south of the Ohio River, then not organized. The committee to whom the matter was referred, on the 14th of November, 1794, reported:

"That by the ordinance for the government of the territory northwest of the Ohio River, section 9, it is provided that so soon as there shall be 5,000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority to elect a representative, &c., who shall have a seat in Congress, with a right of debating, but not of voting. Full effect was given to this ordinance by act of Congress August 7, 1789. That by the deed of cession of the territory south of the Ohio River to the United States, in the 4th article, it is also provided:

That the inhabitants of said territory *shall enjoy all the privileges, benefits, and advantages* set forth in the ordinance of the late Congress for the government of the Western Territory—that is to say, Congress shall assume the government of said territory west of the Ohio, and shall never bar or deprive them of any privilege which the people in the territory west of the Ohio enjoy.

"These conditions were accepted by act of Congress on the 2d day of April, 1790. By an act passed May 26, 1790, for the government of the territory south of the river Ohio, it was enacted:

That the inhabitants shall enjoy *all* the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the territory northwest of the Ohio River, and the government thereof shall be similar to that of the territory northwest of said river, except so far as is otherwise provided in the conditions expressed in an act of Congress of the *present* session of the claim of North Carolina to certain western territory.

"The committee are of the opinion that James White has been duly elected as Delegate, &c., on the *terms* of the foregoing acts," and he was accordingly admitted to a seat. For the arguments in support of this see debate in full in 1st Bartlett, page 85 *et seq.*; same principle in *Flanders vs. Hohn*, id., 438, and the report of Mr. Davis; also *Fearing's case*, 1st Hall & Clarke's Contested Election Cases, p. 127; *Sibley's case*, 1st Bartlett, p. 112; *Segun's case*, id., p. 415; *Randolph vs. Jennings*, id., p. 240; in this case no authority was had for the election, and in the face of an adverse report the Delegate was seated. *Upton's case*, 1st Bartlett, 368; in this case we find the opinion expressed that, in the absence of fraud and intimidation, any number of properly authenticated votes would be sufficient, as a willful neglect to exercise the elective franchise could not invalidate an election in other respects legal.

Smith's case, 1st Bartlett, 107, who was refused a seat as Delegate from New Mexico, was decided on very different grounds from those cited or the one at bar. In *Smith's case* the Territory of New Mexico, which he claimed to represent, had been, prior to the treaty of Guadalupe Hidalgo, by which it was ceded to the United States, a department known to the Mexican constitution, and entitled to representation in the Mexican Congress, and had a departmental legislature. Such organization could not continue after cession to the United States, but the committee making the report in that case found the controlling influence, and which, as they state, confirms them in the rejection of the

claim of the Delegate, in the fact that a very large part of the Territory was at that time claimed by the State of Texas, and that the act of admitting the Delegate would be a virtual decision against the claim of Texas. Before that claim had been determined or in any manner settled, and even then after that report, with all these facts fully and carefully stated, a change of six votes would have given Mr. Smith his seat, so firmly have we been wedded to the doctrine of representation, and to which we still cling.

In conclusion, your committee, in view of the many important interests involved—in view of the many and valuable resources of that Territory yet undeveloped, and which cannot be properly or advantageously developed until the Territory is organized and tribunals of justice created, in which the inhabitants may find a speedy remedy for any and all violations of the rights guaranteed to them by the government—and to the end that these may be properly represented, your committee report the following resolution and ask its adoption:

Resolved, That M. D. Ball be admitted to a seat in the 47th Congress as a duly elected Delegate from the Territory of Alaska, with all the rights and privileges of Delegates from other Territories of the United States.

WM. G. THOMPSON.
GIBSON ATHERTON.

APPENDIX.

1. *Call for convention.*—The original call was by notice inviting the citizens of Harris mining district to meet in Horsford's building, Harrisburg, at 9.30 a. m., July 4, 1881, "for the purpose of taking some action toward the procurement of recognition and representation of this Territory by the United States Government in the next Congress of the United States."

This notice was signed by H. M. Steele and 29 other residents.

The meeting was largely attended, and was organized with W. M. Bennett, chairman, and T. A. Wilson, secretary.

Resolutions were adopted inviting the other settlements to assemble in primary conventions and select delegates to a general convention, to be held at Harrisburg on the arrival of the mail steamer in August. The number of these delegates was apportioned by reference to and report from a committee. The five delegates apportioned to Harrisburg were elected by ballot, and provision was made for notice to the other settlements.

2. *Responses.*—The towns of Wrangèl and Sitka held meetings on the 30th July and 4th of August, respectively, passed resolutions heartily indorsing the call, and elected delegates. Delegates were also chosen by the settlements at Klawak and Killisnoo.

3. *The convention.*—The convention assembled August 15 in Harrisburg. A temporary organization was effected and a committee on credentials appointed, which reported 15 delegates present out of the 18 provided for in the call. Permanent organization was then made, and the memorial adopted. An election was also ordered "for a person to represent the Territory of Alaska, or that portion of it for which we ask a government, in the Forty-seventh Congress of the United States, and to present the memorial adopted." The details of said election were arranged by the adoption of the following:

Plan of election.

Section 1 provides for election on the 5th day of September, 1881.

Section 2 declares qualified voters at same to be all civilized male persons over 21 years of age, residents of Alaska at the time, and citizens of the United States, or who have declared their intention to become such, or may declare it in writing before the judges of election on the day thereof.

Section 3 provides the place in each town and settlement where polls shall be opened from sunrise to sunset on the day of election.

Section 4 provides that such election "shall be by ballot, and shall be conducted by three judges of election at each of said voting places, who shall, before entering on

their duties, take or subscribe an oath or affirmation that they will faithfully conduct the same." Also provides for duplicate poll-lists to be kept, for the ballots to be deposited in a secure ballot-box, for a comparison of lists and ballots on the close of the polls, and purging the ballot-box if required, and for the certifying of the result to a board of canvassers to be appointed.

Section 5 appoints by name the judges of election at the several voting places.

Section 6 appoints William H. Newcomer, W. I. Webster, and Edward McLellan a board of canvassers, to receive the ballots, poll-lists, and certified returns, as provided in section 4, and provides that they shall meet together and open and examine and compare the same, and certify the general result of said election, on oath or affirmation, and shall forward copies of their certificate to the clerks of the Senate and House of Representatives, and to the person elected:

Section 7 provides for filling vacancies among judges of election or in the board of canvassers.

Section 8 requires the secretary of the convention to notify the judges and commissioners of their appointment and duties, and to give public notice of the election and day thereof where required.

Certificate of election.

The board of canvassers appointed met September 13, 1881, and the returns being all in from the voting places provided, they certify that there were 294 votes cast at the same, of which 236 were for Mottrom D. Ball, 57 for M. P. Berry, and 1 for Jack Welch. They further certify that a poll was opened at Chican (a retired settlement), "although no provision for the same was made by the said convention," at which ten (10) votes were cast for said Mottrom D. Ball, and they declare said Mottrom D. Ball duly elected delegate. Their certificate certified as acknowledged and affirmed September 13, 1881, before W. J. Burwell, deputy collector of customs, under his hand and the customs seal. (There are no officials in the Territory authorized to administer oaths except the customs officers.)

Acts relating to Alaska.

The following is a correct synopsis of all acts of Congress relating to Alaska since its purchase, except the items included in the various appropriation bills for revenue service and fur-seal agents.

July 27, 1868, extending laws relating to commerce and navigation; creating a customs district; giving power to the President to restrict the introduction of arms, ammunition, and distilled liquors; prohibiting the killing of fur-bearing animals, and providing for punishment of violations of *this act*. (Stat. at Large, vol. 15, p. 240.)

March 3, 1869, making a special reservation of the Seal Islands, &c. (*Id.*, p. 348.)

July 1, 1870, making it unlawful to kill seals, and providing for lease of the Seal Islands. (*Vol.* 16, p. 180.)

March 5, 1872, supplementary to above, appointing agents, &c. (*Vol.* 17, p. 35.)

March 3, 1873, amending act of July 27, 1868, by extending over the Territory sections 20 and 21 of act of June 30, 1834 (regulating intercourse with the Indian tribes), the sections being those relating to the manufacture and introduction of liquor. (*Id.*, p. 530.)

March 24, 1874, amending act of July 1, 1870, as to months in which seals may be taken. (*Vol.* 18, p. 24.)

April 22, 1874, providing for an agent and naval officer to report on the seal fisheries. (*Id.*, part 3, p. 33.)

May 2, 1878, providing for oath of collector of customs. (*Vol.* 20, p. 47.)

The present status of the rights and privileges of citizens of Alaska.

Extract from a letter of the Secretary of the Navy to Commander H. Glass, U. S. N., commanding U. S. S. Jamestown, Sitka, Alaska, dated Navy Department, Washington, D. C., July 11, 1881 (W. B. L.):

"In the absence of any legally-constituted judicial tribunals, the peace and good order of society demand that the naval authority in control of the Territory should interpose its power to maintain the protection of the lives, persons, and property of individuals within its reach.

"You will, therefore, keep these men in confinement so long as in your judgment the interest of peace and good order in the settlement may require their imprisonment."