Suppose an act of Congress forfeited an election to the Senate procured by bribery, and punished for felony whoever should obtain an election by bribing members of a legislature. Should Mr. CALDWELL be indicted under such a statute, it must be alleged in the indictment, and proved on the trial, that his election did take place, and was so procured and brought about. In such a case, no counsel would trifle with the court by saying his client must be acquitted because there was no election or only a null election. Yet here we sit, hesitating whether in truth the historical event has happened which would be the very foundation of the indictment under the statute I have supposed.

But another puzzle is given us. The House, in judging of elections, throws out bribed votes, and its power to judge is in the same clause of the Constitution with ours; *ergo*, both Houses must judge by the same modes and to the same extent. The pioneer in this doctrine is the honorable Senator from Georgia, [Mr. NORWOOD.] Two Senators have adopted it in debate, but in the "views of the minority" in the case of Mr. CLAYTON, it appears first. Let us consider it. Suppose the Supreme Court had been charged by the Constitution to judge, in respect both of the Senate and the House, of the elections, qualifications, and returns of members; it would not be argued that in each House the judgment must be by the same rules; it would be plain that each House must be judged by the rules applicable to that one. Suppose in this same clause of the Constitution the Supreme Court had been empowered to judge of the appointment, qualifications, and commissions of its own members; surely the court could not judge by the same methods and to the same extent as the House of Representatives. Suppose, using the very words of the Constitution, you give power to the Regents of the Smithsonian Institution to judge of the election of members of that board; they could not proceed as the House proceeds. The power to judge given by the Constitution is attributed to each House *mutatis mutandis*. Do lawyers doubt this? It is attributed to each House for the use of each House, taking into account the difference inherent in the two Houses, and in the thing they have to do. Were this otherwise, the result would be an absurdity. It is not possible to assimilate or identify our province of judging with that of the House. The House inquires, first, were the officers of election legally authorized and qualified? This is the very first inquiry addressing itself to the House. Secondly, were those who voted legally authorized and qualified? Both these things, we are told by the advocates of the pending resolution, we cannot do. These are the very things we may not do. First, we cannot inquire whether the presiding officers who conducted the election in the legislature, were legally elected or empowered; we are estopped to so inquire; and, secondly, we cannot inquire whether the men who voted, were verily members or voters. The House inquires, were those who voted residents; were they citizens; if claiming to be naturalized, were their naturalization-papers fraudulent or forged; were they emitted the day before the election and stained with the color of age from the dregs of a coffee-pot, as thousands of naturalization-certificates have been; were those who voted twenty-one years of age; were they registered? Such are the inquiries in the House, where an entire poll may be thrown out, or a poll may be sifted to find, in the case of each individual elector, was he qualified and entitled to vote. When my friend from Maryland [Mr. HAMILTON] yesterday, by a short, jerky question, staggered the argument of the Senator from Ohio, [Mr. THURMAN,] the Senator from Indiana came to the rescue with a suggestion. He said the Constitution requires that electors for Representatives in Congress shall have the qualifications of electors of the most numerous branch of the legislature in the State; and, therefore, as I understood him, (the remarks do not appear in the RECORD this morning,) the conclusion is, that the House may inquire into the qualifications of electors voting for its members, because the Constitution says that certain qualifications may be required. I thank the Senator for this contribution. It proves all I am arguing at this point, namely, that, by the mandate of the Constitution, the House, in judging of the election of its members, proceeds to inquire of matters touching which we are confessedly estopped. We need hardly go further for answers to the argument that the power to judge, being conferred on the House and on the Senate in one and the same clause, it must, therefore, be in each House a power identical in its methods, its applications, its objects, and its results.

Then, again, we are told that "fraud vitiates everything," and therefore we may undo corrupt elections. As a popular saying, this trite maxim is of some value; as a legal saying, it is far from accurate. Another well-worn saying is, that "a pint is a pound, the world around." It depends, however, upon the kind of pint, and it depends upon the kind of fraud, and upon other circumstances. As an offset to this maxim, I offer another: Fraud vitiates nothing, except in the forum and in the proceeding in which it can legally be tried. Inability to right a wrong in a particular way, may be deplorable, but, if it can be righted in another way, the case is not so bad after all.

My honorable friend from Vermont, [Mr. MORRILL,] gloomy in his views of this case, as I must think he is peculiar, says:

> By our action we must either disapprove or approve of the means by which Mr. CALDWELL secured his election, and, as I am unable to do the latter, I shall briefly give the reasons that will govern my vote.

Suppose Mr. CALDWELL were charged with murder or arson, and we were asked upon that ground to decide that no election took place in Kansas, could we not refuse so to decide without approving murder or arson? Suppose Mr. CALDWELL offered many bribes to members, and they were all spurned, it would hardly be said that the election was void, and yet, if we refused to say so, the Senator from Vermont might warn us that we were approving of offers to bribe.

Mr. President, I believe the Senate to be weary; I am not weary; and I should be glad, could I expect attention, to present some other arguments in this case.

Mr. STEWART. Would the Senator prefer an adjournment at this time, so that he may continue his argument to-morrow?

Mr. CONKLING. I will abide the pleasure of the Senate—glad to proceed, or willing to adjourn.

Mr. STEWART. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to.

EXECUTIVE SESSION.

The Senate proceeded to the consideration of executive business.

After fifteen minutes spent in executive session, the doors were reopened; and the Senate (at four o'clock and thirty-five minutes p.m.) adjourned.

IN THE SENATE.

THURSDAY, *March* 20, 1873.

Prayer by Rev. J. P. NEWMAN, D. D.

The journal of yesterday's proceedings was read and approved.

PRINTING OF DOCUMENTS FOR THE SENATE.

Mr. ANTHONY. I desire to offer a resolution. I do not know but the latter clause of it may come under the objection raised by the Senator from Connecticut, [Mr. FERRY,] and if so I will not press that part of it. It is a resolution that will cause no expense and no sitting during the recess, but will give us some information valuable for us to have, and will enable us to get it more easily, if we adopt it under the authority of the Senate, inasmuch as it must be done by a subordinate officer and cannot be done by a committee, than if it is merely applied for by the committee.

The resolution was read, as follows:

Resolved, That the Committee on Printing be instructed to inquire into the numbers of bills, reports, and public documents printed for the use of the Senate, and their distribution, and to report what changes, if any, are necessary; also, into the practicability of supplying the public with these publications at their cost, with the addition of the postage to be paid upon them; and to report on the same.

Mr. ANTHONY. I do not know but that the latter clause may fall within the ruling of the Chair. If so I will withdraw it.

Mr. FERRY, of Connecticut. I think the Senator had better withdraw that portion of it.

Mr. ANTHONY. Very well. The Senator has no objection to the first part.

Mr. FERRY, of Connecticut. No, sir.

Mr. ANTHONY. I modify the resolution by striking out the latter part of it, beginning with the word "also."

The VICE-PRESIDENT. The Senator from Rhode Island modifies his resolution. The Secretary will report it as modified.

The chief clerk read as follows:

Resolved, That the Committee on Printing be instructed to inquire into the numbers of bills, reports, and public documents printed for the use of the Senate, and their distribution, and to report what changes, if any, are necessary.

The resolution was considered by unanimous consent and agreed to.

HOUR OF MEETING.

Mr. ANTHONY. I move that the daily hour of meeting of the Senate be eleven o'clock a. m., until otherwise ordered.

Mr. SHERMAN. Say ten o'clock.

Mr. ANTHONY. I accept that, if it is agreeable to the Senate. I will say ten o'clock, if the Senator from Ohio prefers.

Mr. SHERMAN. We want to get through with business as soon as possible.

Mr. CARPENTER. Say half past ten.

Mr. ANTHONY. It is suggested that the hour of meeting be fixed at half past ten. I accept that. I want to be agreeable to all Senators, if I can.

The VICE-PRESIDENT. The Senator from Rhode Island modifies his motion so as to make the hour of daily meeting ten o'clock and thirty minutes a. m. The question is on the motion as modified.

The motion was agreed to.

RULES LIMITING DEBATE.

The VICE-PRESIDENT. If there be no further resolutions, the Chair will call up the unfinished business of yesterday, upon which the Senator from New York [Mr. CONKLING] is entitled to the floor.

Mr. WRIGHT. In the absence of the Senator from New York, who is not in his place, I offer the following additions to the rules of the Senate, and ask that they be printed and referred to the Committee on Rules:

Resolved, That the following be added to the rules of the Senate:

RULE —. No debate shall be in order unless it relate to or be pertinent to the question before the Senate.

RULE —. Debate may be closed at any time upon any bill or measure, by the order of two-thirds of the Senators present, after notice of twenty-four hours to that effect.

RULE —. All bills shall be placed upon the calendar in their order, and shall be

disposed of in such order unless postponed by the order of the Senate. All special orders are prohibited except by unanimous consent; and bills postponed shall, unless otherwise ordered, go to the foot of the calendar.

Mr. THURMAN. Let that resolution lie over.

The VICE-PRESIDENT. The Senator from Ohio objects to the consideration of the resolution. Does the Senator ask to have it printed?

Mr. THURMAN. It had better be printed.

Mr. WRIGHT. My motion was that it be printed and referred to the Committee on Rules.

Mr. THURMAN. No; let it lie over.

The VICE-PRESIDENT. Objection being made to its consideration, the resolution will lie over until to-morrow. The order to print will be made if there be no objection.

ORDER OF BUSINESS.

Mr. MORTON. There are several Senators who are expected to speak on the pending question. The Senator from New York [Mr. CONKLING] is entitled to the floor, but he is not here. There are others, who are expecting to speak, that I do not see now. Perhaps there is some Senator who is prepared to go on now.

Mr. CARPENTER. I move that the Senate take a recess until one o'clock.

Mr. ANTHONY. I move that the Senate proceed to the consideration of executive business.

Mr. CARPENTER. I will yield to that motion.

Mr. HAMILTON, of Maryland. If I thought the vote could be taken on this question now I would say nothing upon it; but if there is no gentleman ready to speak upon it, I have a few suggestions to make in respect to the subject, and I will make them now. I have no desire and would not detain the Senate under other circumstances; but if no one else claims the floor, I will say what I have to say now.

Mr. ANTHONY. I withdraw my motion.

The VICE-PRESIDENT. The motion for an executive session is withdrawn, and the Senate resumes the consideration of the unfinished business of yesterday.

ELECTION OF SENATOR CALDWELL.

The Senate resumed the consideration of the following resolution, submitted by Mr. MORTON on the 6th instant:

Resolved, That ALEXANDER CALDWELL was not duly and legally elected to a seat in the Senate of the United States by the legislature of the State of Kansas.

Mr. HAMILTON, of Maryland. Mr. President, this is one of the most important questions, I think, that has been presented for our consideration since we have had a history as a nation, and it presents itself as well in a political as in a moral point of view.

This grave question presents itself in a double aspect. In one aspect, it is wholly a matter of fact, having no personal relation whatever with any one involved in or connected with it; in the other, it is essentially a personal matter. In the former, it is proposed to set aside an election; in the latter, it is proposed to purge the Senate of a member considered not fit or proper to be in it, by expelling him. In the former, a mere majority only is required to effect it; in the latter, a vote of two-thirds is necessary.

The importance and significance of the difference between the two are at once seen.

It is provided in the Constitution of the United States that—

Each House shall be the judge of the elections, returns, and qualifications of its own members.

And, again, that—

Each House may, with the concurrence of two-thirds, expel a member.

In the exercise of the former power, we are to *judge;* and that infers, I take it for granted, that we are to judge of the facts as presented upon the case, and determine their force and effect. In the exercise of the latter power, so unlimited is it in terms, that we may exercise it without a reason or cause, although policy and every sense of right would dictate, if they did not absolutely imply, that it should never be capriciously, wantonly, or unjustly exercised.

It is said, and truly said, that the same powers are conferred upon this body and the House of Representatives to judge of the elections of their respective members. Both Houses are addressed at the same time and in the same language in that clause of the Constitution which grants these powers. But still is it not apparent that this power, so granted, to judge of the election of members, must be qualified or applied differently, as the constituencies of each House, if I may so speak, are so entirely and radically different? The exercise of this power, I admit, will be the same in both cases where the same condition of things exists. When we get beyond this, and the very elements of the election change, the application of this power may also change.

Members of the House of Representatives are chosen directly by the people; Senators are chosen by the legislatures of the States. The Constitution is explicit here:

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years.

Each person, therefore, in voting for a member of the House is brought in his segregated and individual capacity in direct relation to that body. In elections, however, to this body, the legislature, not the members of the legislature, but the legislature as a political entity, as an organized body representing in this very act of choosing Senators the sovereign power and dignity of the State, and as the solemn act of the State itself, is brought only in direct relation to this body, not the individual members constituting the legislature, but the legislature as an organized power speaking for the State and announcing the action of the State. Each State shall have two Senators. Therefore the action of the legislature can be the only subject for the judgment of this chamber in determining the election of Senators. And no doubt, under this power, we may inquire whether it was a legislature that chose a Senator or whether it was not some unauthorized body; whether, as in the case of Asher and Robbins, the legislature had the power at the time the Senator was chosen to do it, and whether it was done according to the mode and manner as prescribed by law.

The House of Representatives can equally inquire into the fact whether the persons voting for members of that House had the right to vote, but then the inquiry may extend far beyond this as the relations between the voter and the House will justify it.

The difference in the application of this power to the act of a legislature in electing a Senator, and that of a person in electing a member of the House, may be plainly illustrated. In the case of the election of a member of the House, the qualifications of the voter can unquestionably be inquired into; but does any one pretend to claim the power that we can inquire into the qualifications of members of a legislature in order to judge and determine whether a choice of Senators has been made by legally qualified members? Can such a power as this be admitted for a moment to be vested in this body? Never! And why not? Because, in the first place, the legislature is a sovereign body, and referred to in the Constitution as the only body which can exercise the right of choosing Senators; and because, next, the legislature is the creature of the constitution of the State, which is an expression of the supreme will of the State, and organized with the power to judge of the qualifications of its own members, and which, too, as a primal law in representative government, is indispensable to the political entity and moral being of any State. No other power can infringe upon this right and the body-politic remain an independent and free State. Allow any other power to determine who are to constitute a legislative body, and it is the end of a free representative government.

Concede to this body the power to inquire as to who shall constitute a State legislature, and therefore to determine who are the members composing it, and you yield at once your whole form of government. Admit this power, and you make this body the judge, not only of the election of its own members, but the judge of the election of members of other bodies intended to be of equal power and dignity within their sphere with our own body in its sphere and to be as free as we ourselves are, and with as full powers of self-protection as we ourselves possess as a legislative body. I think it must be observed that there is a manifest qualification of the power when applied to the act of a legislature as contradistinguished from the individual voter for a Representative to the other House. Therefore, as we cannot inquire into the qualification of a member of a legislature, how is it that we can go behind its expressed will and inquire into the motives of members to ascertain the reason for it? It is the solemn act of a body-politic, and it is the act, the result of their expressed will, that is the only effective thing, and that which alone can be considered, and not the segregated conduct of individuals. I cannot, therefore, entertaining these views, vote for the resolution reported by the committee declaring in substance the election to be void. Always disinclined, as I am, to the exercise of any power not clearly granted, I always regret the exercise of any doubtful power, and have always hitherto opposed it; and, conceding for the sake of the argument that this is even a doubtful power now attempted to be exercised in setting aside this election, I am, from its very extraordinary character, and from what I apprehend to be its dangerous tendencies, the more resolutely opposed to it. Why not resort to a power we do possess in this case, the power of expulsion? Why not, rather than to a doubtful power, at all events a power that is contested on this floor as no power at all by some, however clear it may be to others, as the rightful exercise of an undoubted power? True, it requires a greater number of votes to effect results, but if the facts show a case for avoiding the election on account of fraud and bribery, and with the complicity of the Senator on trial, there can be no moral difficulty in asserting our undoubted power of expulsion.

I desire to be understood in the exercise of this power of expulsion. I would that it should never be resorted to but upon the strictest principles, and never perverted to base uses. I would look with solicitude and with apprehension upon its exercise for acts committed before the election of a Senator, and which the people and their representatives in the legislature might be supposed to know before the election. After the election they are concluded; the Senator-elect has passed beyond their power, and afterward can only be amenable to this body for his conduct. Happily, in the case before us we are not pressed beyond the reasonable exercise of our powers; the acts were committed in and about the election, and consummated since; in fact all of them being of the *res gestæ*, and because of which the whole thing constitutes one act from its incipiency before the election, through the election, and up to the time when the money was paid and the oath of office taken. Therefore, in every aspect of the case, I prefer the exercise of the latter power, and shall vote accordingly.

It is said that unless we assert this power of setting aside an election, railroads and other powerful corporations and combinations may corrupt with impunity members of legislatures, and secure the return of Senators to this chamber entirely in their interest, and yet at the

same time the Senators themselves not be criminally cognizant of the corrupt means used to send them here; and thus, so far as their own personal conduct is concerned, not be subject to our censure, and perhaps ought not to be amenable to our power.

This is an apprehended evil—indeed, I may admit that it is an impending evil; but still, prudence would suggest that we do not rush upon the exercise of doubtful powers, much less of those not granted, in order to prepare for the redress of evils not yet upon us; and especially when we have, as in this case, the admitted power to redress the wrong alike committed upon the people and upon this body. I sensitively shrink from the exercise of a power that places the solemn action of a State legislature, and which it is admitted is the absolute right of the legislature under the Constitution, and required by it to be done, in the grasp of a mere majority of this body. I appreciate the power, and fear as much as any one the influences of railroads and other corporations, of capital and combinations of wealth, in sending Senators into this chamber; but may not, upon the other hand, this mere majority be approached by these powerful influences and combinations to unseat a member who might be obnoxious on account of his purity, honesty, and independence, as well as to seat one in their interests?

Examples are not wanting, even in our own brief history, to show that majorities are to be no more trusted here than elsewhere.

I can well conceive, from my historical and personal knowledge and experience, that there are times and occasions when I would sooner trust majorities upon the outside of this chamber than a majority in it.

A mere majority to do these things, either to set aside an election or expel a member, may have the strongest motives to do either, while generally there must be a total absence of any motive, except that of strict right, with the two-thirds. For two-thirds could not well be called upon to expel a member in order to accomplish any legislative object, when a majority could do it as well.

Mr. President, it was not my purpose to say much upon the legal or constitutional aspect of this case; it was only to express to this chamber the views that shall regulate my conduct in giving my vote on this question; but I cannot avoid here for one moment noticing an argument or two submitted by the honorable Senators from Ohio [Mr. THURMAN] and Georgia, [Mr. NORWOOD,] and, if I mistake not, if I understood him, the Senator from Missouri, [Mr. SCHURZ.] It struck me that the whole tendency of their respective arguments was this, that there should be some body somewhere with power to act as the censor of the members of the legislatures of the States. It struck me that this certainly was the tendency of the argument of my honorable friend from Ohio. It was the sum and substance of the argument of my honorable friend from Georgia that there should be some power residing somewhere to judge, determine, and correct the misconduct of members of the legislatures of the States in the election of Senators; and they unhesitatingly said that if there were no such power in express terms granted in the Constitution, it ought to be. But they asserted that that power was fully conferred upon this body under that provision which authorizes it to judge of the elections of Senators by the legislatures.

Now, Mr. President, have we come to this? Are the States, are the members of the legislatures of the sovereign States of this Union, to pass under the censorship of this body? True, they may be corrupt; true, they may act badly—the people everywhere may act badly—a whole nation may act badly—but how can that be helped, and where but in the people themselves does the remedy lie? Are we to determine—are we seventy-four Senators, holding our offices for six years, responsible to nobody, not either responsible to our own States or to the people, for that period of time—to set ourselves up in this chamber as censors on the conduct of members of the legislature? Are we to go behind their act as a body, and inquire into the motives of members for doing it? Are we to ask their reasons? The Senator from Maine is to come into my State, and inquire into the motives of representatives of the people there, supposed to be good men, and, if not, that is our misfortune. It is our misfortune if they are not good and pure men, and the people there ought to apply the remedy, as they have the power and we have not the power to do it. If they send impure men here, it is both a shame and a wrong, but the rest of the country must bear with it until rectified by the people or by ourselves when we can properly and legally do it. Let the remaining Senators hold us accountable for our legislation and personal conduct. If we are corrupt here, turn us out; hold us amenable for our conduct as Senators. But let not this body, let not Senators outside of my State, the Senator, for example, from California, sitting by me, come into my State, and undertake to put the members of my legislature on trial, and inquire of them, "How did you come to cast your vote for Mr. HAMILTON, or Mr. DENNIS? We want to know your reasons. Was money given to you; was office held out to you; was a pistol drawn upon you; were you threatened; were you intimidated, so that under fear you cast your vote?"

And here I will observe, speaking about fear and duress, and about which so much has been said, that it must be that when it goes to the impressment of a legislature as a body and affects it as a body. I spoke about a pistol being drawn upon a member; it was upon the occasion of a senatorial election, and an illustration here. If I mistake not, that occurred in the State of Pennsylvania, that is, if my information is true, and I have no reason to question it, for it is very hard to beat the honorable Senator from Pennsylvania [Mr. CAMERON] when either democrats or republicans are in power in that State, especially when the legislature is closely divided in its politics. We know that from experience. We know, or at all events are advised, that when Mr. Buckalew, lately a Senator here, was elected by one or two votes—there being a democratic majority in the legislature—that a member voted with a pistol by his side. Now, in illustration, say upon that occasion there were fifty on one side and fifty on the other, and this one vote determined the election. Would you call that duress—and more particularly a duress of the body of the legislature? One man there, for the sake of the argument, was under duress out of the hundred, and would this give you the power to inquire into and set aside the act of that legislature in the election of a Senator? And for what, if so? Because one man was frightened out of one hundred; he, being a democrat, frightened to do what he ought to have done without any inducement or threat, while all around him were cool and calm, and never dreamed of hurting or of being hurt. Would you undertake to assume jurisdiction, inquire into, and set that election aside? Would you undertake to inquire and to determine whether that member voted in fear, or because he was a democrat, and therefore, in allegiance to his party, voted for the democratic candidate? It would be both a troublesome and a delicate inquiry, and would lead to all kinds of assumptions of power.

I, for one, do protest against this body coming into my State and trying the members of the legislature as to their reasons or motives for performing a legislative function, whether from fear or from favor, for office or for money; whether from State considerations or from personal feelings; whether to seek vengeance or secure favor; for if your power to inquire for one thing is admitted, you at once make it limitless. You may put the action of the legislature upon trial; you may ascertain whether it was a legislative body, and whether its action was in conformity to law. You may possibly inquire whether one hundred members voted or whether one hundred muskets voted in their stead; and this would refer to the question of duress, if such a term can be applied to a functional legislative body.

The honorable Senator from Missouri, [Mr. SCHURZ,] for the purpose of establishing a distinction or principle that I cannot precisely understand, asked a question of the honorable Senator from Delaware, [Mr. BAYARD,] whether the Senate was not the creation of the Constitution. Of course it is the creation of the Constitution! Therefore, is it not an independent body, and has it not a right to judge of such things, so entirely connected with itself as the election of its own members? I give the substance as near as I can, not his words. True; but it can only judge under the powers conferred by the Constitution. Admit that Senators are not here in an embassadorial capacity, we are still here under the limitations of the Constitution, and can only exercise the powers therein granted; we can judge, or do any other thing, only so far as it is authorized by the Constitution.

We are here to represent what? To represent the States, their sovereignty, rights, and powers. The Constitution says that each State shall have two Senators, to do what, to determine what? To do and perform all acts and things as prescribed and required to be done by the Constitution, and nothing besides. The States did not send us here, nor does the Constitution give us the power, to sit in judgment and decide who composed the members of a legislature, and much less their reasons for any action, however absurd or wrong it may appear to be.

If the Constitution fails because of the corruptions of the people, our form of government fails, and all is brought to a disastrous end. If we cannot get along under the Constitution without undertaking to uproot and upturn all our previous ideas connected with its limited powers, let us acknowledge the failure, and let us set to work to make a different and a better one if we can. If this power ought to exist to hold in check and correct the corruptions of the people or their representatives, let us make it; let us have it amended, and let us have it fixed that we are to sit here as censors upon the acts and conduct of the members of our legislative bodies in the States. Then let us have full powers to judge and determine reasons, motives, conduct, everything. This being a body responsible to no one for six years' duration, it may be able, I have no doubt, in the opinion of some, to give as fair an examination and as impartial a judgment as even Cato the censor did. But so far as I am myself concerned, I never would give to this body, or to any other, such a power over the members of the legislatures of sovereign States. Such a power would be consolidation itself.

I have thus briefly commented, and in a very imperfect manner, upon the legal part of the case. Now let me turn my attention to its moral condition and political relations.

Mr. President, this is a most painful duty we are now obliged to discharge as Senators. I know the Senator upon trial. Our relations have been friendly and pleasant, and his deportment and conduct upon this floor have been unexceptionable. His great misfortune in his aspirations for a seat in this chamber was that his plane of thought and feeling did not rise higher than the atmosphere of Kansas. The testimony shows a horrible condition of things there both in a moral and a political sense.

The honorable Senator from Illinois [Mr. LOGAN] has criticised, and I am not here to say that he has unfairly criticised, the character and testimony and conduct of some of the prominent witnesses against Mr. CALDWELL, and has denounced them as bad, corrupt men, and unworthy of belief. But however bad and corrupt these men may

be, the trouble of the Senator on trial is that they were his associates and friends, or at least co-workers in this matter; and it is admitted by him that he paid $15,000 to one of them, Carney, and a written agreement to that effect was executed and delivered, under a contract that he, Carney, should not be a candidate for this seat. It is also proved, by a friend of Mr. CALDWELL, Mr. L. Smith, that an additional $7,000 went to Carney, in the shape of expenses, making $22,000 altogether, though Carney, while admitting the payment of the $7,000 by Mr. CALDWELL, denies that he got it. All this, in itself, is not only sufficiently culpable, but it tends to give tone to the other testimony, touching the purchase of members of the legislature themselves, however unsatisfactory it might be, standing alone; for one cannot well resist the conclusion that a person who would buy off a candidate would not hesitate to buy up a voter.

Mr. President, we have passed through a cold and a gloomy winter. We have passed, too, through a cold and a gloomy session. The last session of Congress has been without a parallel in our legislative history. Instead of inaugurating measures to relieve the country from a debauched and a debauching currency, to reduce expenditures, to revise the tariff and internal taxes and reduce them, to reduce the Army and Navy, to do something in order to relieve the shipping and agricultural interests from the oppressions which now bear so hard upon them; instead of directing our effort to the accomplishment of these great objects, we have had committees in both Houses composed of leading members—gentlemen of eminent ability, and of the highest integrity of character—laboriously engaged during almost the whole session in the investigation of fraud, corruption, and of personal misconduct. From the frauds, corruptions, and usurpations in Louisiana, down through the intrigues, speculations, and corruptions of the Credit Mobilier to the bribery and corruptions in Kansas, we have had committees continually examining, exposing, and reporting the whole session long; so that the very atmosphere we breathed in this and in the other House was tainted with the impurities thrown up by these investigations. As no respect was paid to persons, so no one involved in any degree in any of them escaped observation. It was well settled here that no one should be deprived of the right of investigation on account of race, color, or previous condition, whether of character or of position. Men of high degree and men of low degree; Christian statesmen and trading politicians; moralizers and revilers; financiers astute and speculators reckless; men impecunious and rich men; men of vaulting ambition, men of prying conceit, were altogether in the same caldron, bubbling and boiling the winter through. The three witches in Macbeth never sang around a caldron containing more extraordinary ingredients.

That session has made for us and for our country a record of shame. The good that may come of it is that these exposures of error or of guilt, whatever it may be called, may impress all to do better in the future, even if no higher and nobler motives should prompt us. History is again repeating itself. Can it be that the corruptions of old Rome should be already upon our young and vigorous state? Have we reached the matured age of a nation before we are fairly out of the swaddling-clothes of infancy?

Rome, true, had no gigantic railroad corporations who, with their wealth and capital, could tamper with the public virtue, and with their power influence the public sentiment; nor had she the great kindred corporations everywhere existing in this country and wielding such a prodigious power. But she had her Appian and other great highways, over which her legions marched to conquest and returned in triumph laden with the spoils of conquered nations. While she had no Credit Mobilier, she had lands to distribute and largesses of money to bestow upon her corrupted citizens. She had men of untold wealth, both citizens and senators. Hardly anywhere in the world since has there been more aggregated wealth; and nowhere, before or since, did capital ever exert more power than it did at Rome in the days of Sylla, Pompey, and Crassus.

Senators will pardon me for recurring for one moment to the condition of her senate at this period, and to the character of one of her leading men. It may aid us in criticising our own conduct and condition, and avoiding, if not too far gone, the evils it exposes.

You all know who Marcus Crassus was. I desire to read a masterly cast of character drawn by a distinguished historian of that celebrated man and senator:

> Far inferior to many of his peers in mental gifts, literary culture, and military talent, he outstripped them by his boundless activity, and by the perseverance with which he strove to possess all things and to become all-important. Above all, he threw himself into speculation. Purchases of estates during the revolution formed the foundation of his wealth; but he disdained no branch of gain; he carried on the business of building in the capital on an extensive scale and with prudence; he entered into partnership with his freedmen in the most varied undertakings; he acted as banker both in and out of Rome, in person or by his agents; he advanced money to his colleagues in the senate, and undertook—as it might happen—to execute works or to bribe the tribunals on their account. He was far from nice in the matter of making profit. On occasion of the Sullan proscriptions a forgery in the lists had been proved against him, for which reason Sulla made no more use of him thenceforward in affairs of state; he did not refuse to accept an inheritance because the testamentary document which contained his name was notoriously forged; he made no objection, when his bailiffs by force or by fraud, dislodged the petty holders from lands which adjoined his own. He avoided open collisions, however, with criminal justice, and lived himself like a genuine moneyed man in homely and simple style. In this way Crassus rose in the course of a few years from a man of ordinary senatorial fortune to be the master of wealth which not long before his death, after defraying enormous extraordinary expenses, still amounted to 170,000,000 sesterces, (£1,700,000.) He had become the richest of Romans, and thereby, at the same time, a great political power. If, according to his expression, no one might call himself rich who could not maintain an army from his revenues, one who could do this was hardly any longer a mere citizen. In reality, the views of Crassus aimed at a higher object than the possession of the fullest money-chest in Rome. He grudged no pains to extend his connections. He knew how to salute by name every burgess of the capital. He refused to no suppliant his assistance in court. Nature, indeed, had not done much for him as an orator; his speaking was dry, his delivery monotonous, he had difficulty of hearing; but his pertinacity, which no wearisomeness deterred and no enjoyment distracted, overcame such obstacles. He never appeared unprepared, he never extemporized, and so he became a pleader at all times in request and at all times ready, to whom it was no derogation that a cause was rarely too bad for him, and that he knew how to influence the judges not merely by his oratory, but also by his connections, and, if necessary, by his gold. Half the senate was indebted to him; his habit of advancing to "friends" money without interest, revocable at pleasure, rendered a number of influential men dependent on him, and the more so that, like a genuine man of business, he made no distinction of parties, maintained connections on all hands, and readily lent to every one able to pay or otherwise useful. The most daring party leaders, who made their attacks recklessly in all directions, were careful not to quarrel with Crassus; he was compared to the bull of the herd, whom it was advisable for none to provoke.—*Mommsen's History of Rome*, vol. iv, pp. 24–26.

Mr. President, I thought that at the conclusion of such a session as the last it might be most appropriate to the occasion, if not, indeed, most profitable to us all, that this portrait of a marked historical character should be brought to the attention of the Senate. I have no comments to make upon it. I could not, if I never so much desired, give more point and direction to it than it does itself in the simple reading of it; it speaks for itself.

Sir, the President, in his late inaugural, has flown off into the realms of fancy; indeed, into the higher regions of prophecy—and predicted a kind of millennium, when every civilized people would be republican; when the world will become one nation, and shall speak one language, and have no more armies and navies. The enthusiasts of old, in their exaltation of the great brotherhood of man, could do no more.

Mr. President, I fear that our distinguished Chief Magistrate is more hopeful than sagacious. His accuracy of reasonable deduction I must doubt. His is no Baconian philosophy. But that under the bright sunshine and crisp air of the 4th of March, with all the pageantry and pomp and adulation of incoming or continuing power around him, he gave too loose a rein to exuberant feeling, rather than, upon such a great state occasion, more carefully depending upon a cool judgment.

I must confess that, for myself, I am not so hopeful of such great results. Most certainly I do not see them in the future either in Europe, Asia, or even in Africa, and much less in the islands of the sea. And then when we come to our own favored continent, and still further, when we come to our own favored country, what a gloom is already settling around it and upon it. Instead of being a guiding-star to others, as predicted by the President, I rather fear that it may prove to be an *ignis fatuus*, leading other and too-credulous nations into the very quagmires of trouble. I confess that I do not see any very great movement, either in Senegambia or Guinea, toward giving up their nationalities, their government and language, even under the substantial inducements of the fifteenth amendment, to become a part of us. [Laughter.] I doubt very much whether the Chinese, even through the operations and the co-operative aid of the Pacific Mail Steamship Company, will be willing, within the next decade, at any rate, to resolve themselves into republicans, abandon their language of characters, and take up with our consonants, diphthongs, and vowels. I doubt whether the German nationality is beginning to dream of dissolving itself as a nation, and consent to be absorbed in a world-nation, and to speak one language, even if it were to sacrifice the *mutter-sprache*. And as for ourselves, sir, I did not see a single appropriation made—and I think there is hardly an object anywhere on earth that did not have one in the appropriation bills of the last session—for the construction of any establishment for the purpose of beating our spears into pruning-hooks and our swords into plowshares; but, alas, on the contrary, great sums of money provided not only to prepare for war for all time to come in this world, but, if it could be, to carry it on in the world to come. [Laughter.]

If unity is to compass all good, as our Chief Magistrate would indicate, then, in a restricted degree, how well it would apply to Kansas! In the testimony taken in the case before us, and in that taken in the case of the late Senator Pomeroy, it is shown that the people and legislators of that State speak but one language, have but one mind, and are actuated by one motive. There is a millennium in that State, not one, we must all admit, based upon any moral or religious sentiment, but nevertheless one resting upon uniformity—the uniformity of bribery, corruption, and villainy. There is no example like it in any other State. In Louisiana, Florida, Alabama, Arkansas, South Carolina, only portions of their people have been instrumental in making them pandemoniums of fraud, corruption, usurpation, and violence; but in Kansas there does appear to be a unity of guilt not before paralleled, and, it is to be hoped, never again to be witnessed.

Mr. President, what is to be done? As Senators who feel that the dignity of this body must be shielded, the interest and honor of the country protected, and our own self-respect vindicated, we must lay our hands upon any sort of corruption wherever and whenever it appears, when we have the constitutional power to do so. We dare not compromise with it; we cannot, in safety to ourselves or with credit to free institutions. While I may sympathize with the person who is to be the subject of my judgment, I cannot escape the paramount duty of condemning the act in the most solemn form known to this or any other legislative body.

Mr. CONKLING. Mr. President, the Senate yesterday, honoring me with attention, the more gratifying because I did not expect and could not deserve it, listened to a wearisome statement. I attempted to give some reasons questioning the rightful power of the Senate, of its own mere motion, to dissolve the choice of a Senator made by the legislature of a State. I will conclude this branch of the subject by alluding briefly to some of the results of adopting the resolution before us. Should it be adopted, it will stand adjudged and recorded, that no choice of a Senator having been made in Kansas in 1871, the seat which was once held by Mr. Ross has been vacant ever since Mr. Ross left it. The governor of Kansas cannot fill such a vacancy. The Senator from Pennsylvania [Mr. SCOTT] the other day assumed that he might; but the Constitution shows us that no appointment can be made by the governor of Kansas to fill the place, if it has not been filled by the election of Mr. CALDWELL.

And if vacancies—

I read the words of the Constitution—

happen by resignation, or otherwise, *during the recess of the legislature of any State* the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

It is in the case, and only in the case, of a vacancy which "happens," (and in passing I remind Senators that the word "happen" has come to be a term of art, from repeated judicial and parliamentary construction;) it is only in the case of a vacancy which "happens" during the recess of a legislature, that a temporary appointment may be made by the governor. I turn to the act of Congress to learn who may fill the seat which, if this resolution be true, ALEXANDER CALDWELL does not, by law, hold. I read from the act of 1866:

That the legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator *was elected* to represent said State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, in the place of such Senator *so going out of office*, in the following manner.

The legislature "chosen next preceding the expiration of the time for which any Senator *was elected*." If this resolution be true, ALEXANDER CALDWELL was not elected; no Senator has been chosen to the seat since Mr. Ross was chosen; and the only legislature which under this provision of the statute could fill it, has completed its term and is dissolved forever.

I follow this statute to find the section which provides for filling this seat after the resolution on the table shall establish that it has not been filled.

Another section declares—

That whenever, on the meeting of the legislature of any State, a vacancy shall exist in the representation of such State in the Senate of the United States—

That is the case here, if the resolution be true—

said legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy in the manner hereinbefore provided for the election of a Senator for a full term.

That cannot be done now, because the day has passed. The legislature of Kansas, oblivious to the fact that it had a vacant Senatorship to fill, has lost the opportunity, from lapse of time; and its session, now expiring, will cease before tidings of our action will reach it.

The concluding words of this section are:

And if a vacancy shall happen during the session of the legislature, then on the second Tuesday after the legislature shall have been organized, and shall have notice of such vacancy, it shall proceed, &c.

That is not this case. That is the case as it would be should Mr. CALDWELL be expelled, because a resolution of expulsion would affirm that, having been elected to his seat, he held it until the resolution operated upon him, and then a vacancy happened; and the happening being during the session of the present legislature, the legislature could proceed, on the second Tuesday after notice of such vacancy, to fill it by an election. If the resolution of expulsion found the legislature not in session, the governor could appoint under the Constitution.

This statute was devised cautiously by the Judiciary Committee of the Senate, when the Judiciary Committee was the Committee on Privileges and Elections, and when its members had become somewhat versed in the law applicable to contested elections and to the tenure of seats in the Senate. The statute was intended, along with the Constitution, to cover every conceivable case of vacancy. It was intended to provide for every contingency which judicial or parliamentary foresight could suggest. But the resolution before us presents a case never dreamed of by the men who draughted, amended, and enacted any statute to be found in the records of Congress.

To enable any power to fill this seat, what must we hold next after the adoption of the resolution? One of two things: either that the statute is merely directory, only a puff of air, to be observed by legislatures when they choose to observe it, or not to be observed at all; or that we have found a *casus omissus* in the statute. Is there any other alternative? I invite Senators to suggest it. Can we get over or around this statute, except by holding either that it is not mandatory and may be disregarded, or else that the statute is silent because it has been left for Mr. CALDWELL to illustrate a contingency never conceived of by any of the statesmen or lawyers who have left their foot-prints on the sands?

The resolution abounds in odd consequences. Several statutes provide that every Senator shall be paid "from the time that the compensation of his predecessor ceased." Who, if ALEXANDER CALDWELL was not elected, will be the predecessor of him who comes next? Should Mr. CALDWELL be expelled, he would be the predecessor of the man who succeeds him; but when we have decided that Mr. CALDWELL was never elected, never a member, who, I repeat, is to be the predecessor of him who comes next in order? Manifestly Mr. Ross will be his predecessor; and by act of Congress the new-comer will receive pay for all the time since the term of Mr. Ross ended. Mr. CALDWELL has already received the pay, and no one will argue that it can be recovered back from him.

If we can avoid the election after Mr. CALDWELL has been here two years, we may do it in his case or another's at the end of five years; and by the law of the land, should five years elapse before the Senate discovers that, owing to the motives of the members of the legislature, an election was null, "back pay" would cut no mean figure in the affair. The compensation of a Senator for six years is now $45,000, and a man elected to a vacancy five years old would receive $45,000 for one year's service in the Senate, and at the same time the man adjudged never to have been elected at all would have received $39,000. And yet, Mr. President, we must not flinch, because this is a question of "courage!" The Senator from Vermont [Mr. MORRILL] tells us if we do not fight it out on this line, it will look as if we approved of bribery. The Senator from Vermont underrates, I think, the intelligence of the American people if he supposes that they can be hoaxed so easily.

Mr. SCOTT. If he should be re-elected, would he not receive pay over again?

Mr. CONKLING. My friend anticipates me. I have a yet stronger case to put. A newspaper has been laid on my desk in which it is stated that the friends of the late Senator from Kansas (Mr. Pomeroy) are moving, and that in the event of Mr. CALDWELL vacating his seat, they hope to return Mr. Pomeroy to it. Is Mr. Pomeroy not eligible? Suppose he should be elected; look at the grotesque plight of the matter of salary and membership, then! Mr. Pomeroy served in this body during the whole of these same two years, receiving pay for all the time. If he were elected to the seat now occupied by Mr. CALDWELL after this resolution is adopted, he would come adjudged to take the seat as of the term beginning March 4, 1871. And thus one man would be adjudged by the Senate to occupy both seats from the State of Kansas, to be both Senators from that State, and to receive both salaries at and for the same time! I confess my "courage" is a little daunted by such a proposition.

Mr. FERRY, of Connecticut. Will the Senator allow me to ask a question?

Mr. CONKLING. Yes, sir.

Mr. FERRY, of Connecticut. I understood the Senator yesterday to agree that the Senate might declare a seat vacant where the election had been controlled by duress. Would not the same train of consequences which the Senator has supposed to follow in the case of the passage of this resolution follow in the case of the vacating of a seat which had been filled by duress?

Mr. CONKLING. As a case possible in supposition, there may be force in the Senator's question. As a case applicable to the real transactions of life, it fails from impossibility. It could not occur historically or legally, if military force captured a legislature and coerced an election, that it would be years before a discovery or suspicion of the fact. If a military revolution should swallow a legislature, the Committee on Privileges and Elections being charged on the 11th of May, 1872, to inquire, would be able to report before the 17th of February, 1873. I am answering my friend upon the fact, and the practical sense of the thing. As matter of speculation, if a Senator should be chosen by a regiment of infantry marching upon a legislature, and casting a ballot of bayonets in a joint convention of bayonets, and nobody should know it, or it should not get out for years, I am not prepared to say that some of the difficulties I have suggested might not exist. It has often been said that hard cases make shipwreck of principles; and that extreme cases, obscure rather than aid the mind. The suggestion of my friend seems so far from the line of human probabilities, that it is difficult to utilize it in this discussion. If we can dispose of the case before us aright, we may hope to be equal to other cases when they arise.

Mr. President, I leave this branch of the subject, having detained the Senate already too long, and I proceed to consider the question as it would stand, admitting the fallacy of the positions I have endeavored to maintain.

I take up the case now as it must be tried, if the Senate shall hold that, unaided by a statute, it has power of its own mere motion to vacate an election made by a State. I ask, first, if impure motive in those who voted be the matter we must judge, how must it be proved, and of how many members must it be found?

Bribery is a crime; all fraud is a crime; and, like every other crime, it must be proved. So say the books. It cannot be presumed. Conjecture will not do; hearsay will not do; it must be established by legal evidence. To convict a man of a murder not fully proved, is to do judicial murder. Discarding from this volume of questions and answers so much as confessedly would be received in no court of justice, we must extract the facts proved by the remainder. This is no easy task, and those who have undertaken it are opposed in their conclusions. The Senator from Wisconsin, [Mr. CARPENTER,] who has spent more than twenty years in studying the art of weighing evidence, who has distinguished himself in practicing the profession whose chief faculty it is to ascertain truth, and who sat from beginning to end as a member of the committee and listened to the witnesses, tells us that upon all the evidence no upright and intelligent jury could find a single

instance of bribery of a member of the legislature. The Senator from Illinois, [Mr. LOGAN,] another member of the committee, gives us the same assurance. The Senator from Rhode Island [Mr. ANTHONY] also dissented from the report, although he has expressed no opinion in the case. Three members of the committee dissent. The report comes to us from but four members; and with those who saw and heard the witnesses almost equally divided, we, who did not see or hear a single witness, must glean as we may from the bare record.

Before coming to the question whether bribery is proved, and how much bribery is proved, it will be convenient to determine whether our judgment depends upon the number of members bribed. If one bribe be fatal, we may be relieved from pursuing the details of the testimony. Let us consider, then, how many voters must have been bribed to destroy the election. Expulsion, may be for one bribe as well as for one thousand. The turpitude of the act, not its effect or repetition, is the test in cases of expulsion. An offer to bribe, may be enough for expulsion, if a bribe accepted, would be. So a statute punishing bribery, is satisfied by one bribe, as much as a statute punishing perjury, is satisfied by one perjury. The English statute which disables a briber from holding the office, and forfeits the seat, makes one bribe constitute the crime. Why not? The British statutes, remember, recognize and assume the election, because they forfeit it. I call attention to the fact that, running through the English statutes, descending from one to another, is a fixed and identical phraseology, treating the election as a fact, and then working, as penalty and forfeiture in the briber, disability to hold the office.

Observe the language employed by Parliament, and adhered to again and again in succeeding enactments:

> That every person and persons so giving, presenting, or allowing, making, promising, or engaging, doing, acting, or proceeding, shall be, and are hereby declared and enacted to be, disabled and incapacitated upon such election to serve in Parliament for such county, city, town, borough, port, or place; and that such person or persons shall be deemed and taken, and are hereby declared and enacted to be deemed and taken, no members in Parliament, and shall not act, sit, or have any vote or place in Parliament, but shall be, and are hereby declared and enacted to be, to all intents, constructions, and purposes as if they had never been returned or elected members for the Parliament.

Here is a manifest implication that an election is not void on general principles because a bribe entered into it. The very basis of the statute is that at common law, such an election is valid; and that to get rid of its results, a statute is needed. Recognizing the election, the statute proceeds to deprive the guilty man of its fruits. If no effectual election had occurred, if an act of bribery had made it null and void, it would be absurd to declare that the briber should "be disabled and incapacitated upon such election to serve in Parliament," and that he should be deemed and taken no member, "and shall not act or sit," and shall be, "to all intents, constructions, and purposes as if he had never been returned or elected." Such language could never creep into a series of statutes, if, without any statute at all, the election itself were void, and the man voted for had no footing whatever by reason of it. For the purpose of such disabling statutes, one instance of bribery is all-sufficient; and so it will be for the statute, which I predict will soon find a place among the acts of Congress.

But in the absence of a statute, bribery, to undo an election *ab initio*, must, I think, be bribery which controlled it. Superfluous votes tainted, will not turn all honest votes to ashes. If, after casting out every corrupt vote, a majority of unbribed votes remains, the majority will stand, and stand on the law of majorities. Any other rule would work monstrous evil and injustice.

Assume that one bribe given to a member of the legislature, vitiates the election of a Senator, and see to what such a doctrine might lead. Let me put a case. The two houses first vote separately; each house chooses the same person; in one house he receives forty majority; there is no pretense of any bribe there; in the other house he receives five majority, and there is an allegation of one bribe in that house. The two houses having agreed, no vote in joint convention occurs, and upon the rule that a single venal vote "poisons the whole election," two things follow: first, one bribe in one house not only vitiates the election in that house, but vitiates the election in the other house also where there was no bribe at all; and secondly, although there was a majority of forty-four unbought votes in the two houses for the same person, the election would fall whenever the one bribe in one house came to light. The law has no analogy for such a dogma.

"False pretenses" is an offense by statute, "cheats" an offense at common law; but every lawyer knows that the false pretense must accomplish the purpose; it must be the means by which the signature, the money, or the goods were obtained. It must, in short, be the turning-point. The prosecutor must prove that, but for the particular representation alleged to be false, he would not have parted with the money or the property. The relation of cause and effect, is part of the philosophy of the law. Must not bribery, to be ground for destroying an effect, be the cause of the effect? Must it not have influenced the result? Must it not be something more than a mere concomitant fact? New Jersey and New Hampshire formerly elected members of the House of Representatives by general ticket; an act of Congress has directed otherwise since. Each voter, in voting for one Representative, voted for all the Representatives of the State. If the doctrine now urged upon us, that one bribe will vitiate an election, not disable the briber, or subject him to expulsion, but altogether undo the election itself, be the law, one bribe accepted by any voter in the State of New Jersey, would have prostrated the election, not only as to the man by whom or for whom the bribe was paid, but as to all others for whom the bribed vote was cast. Would it not? Suppose two Senators are to be elected in a legislature together, at the same time, as has often occurred; they are voted for on the same ballot, and one of them has bribed a member of the opposite party; shall it be held that the ballot the bribed member votes, is void *pro tanto*, that is, one-half bad and one-half good; that it takes effect as to the name upon it which he was not specifically bribed to vote for, and takes no effect as to the other; or that it is wholly void, and, being void, makes void every other vote cast for both of the two persons who receive the majority?

So in the case of State officers: a governor and eight other nominees run upon the same ticket; one candidate, or his friend, pays money to a lounger about the polls to vote, and he votes the whole ticket; a majority of one hundred thousand may pronounce for that ticket, but the election is void, we are told, because one man was bribed. At the last election, the State of New York elected one member of the House of Representatives at large. He received about sixty thousand majority, and now we are asked to hold that, if it could be found that one man was bribed to vote for him, his election would be void. Mr. President, does not such a proposition shock the common sense of every man? Does it not shock every mind able to put two and two together? When you deal with a statute like the English statute, which denounces the man who offered the bribe and punishes him, it is all plain sailing; but the idea that the expressed and recorded will of nine hundred thousand electors in New York, can be stifled and wiped out because one loafer got a glass of grog or a ham for his vote, is enough to excite a smile upon the frescoed faces of the fathers of the Republic.

Indiana last year elected two members of Congress upon a ticket at large. The struggle was hot and the vote was close. A few votes changed, would change the result, and this was known beforehand. It is not to be presumed that lax morals prevail in Indiana, or that an instance could be found in which a political mendicant managed to get money from a committee or a poll-driver. But proclaim the doctrine that meat, drink, or money given to one man to influence his vote, upsets the whole election, and slippery may be the footing of the Representatives elected by only a hundred majority, in a canvass in which both sides strained every nerve, and in which all the people of a great State were enlisted!

The State of Pennsylvania elected at large three Representatives, and by a majority of about forty thousand.

Mr. SCOTT. Forty-seven thousand.

Mr. CONKLING. Forty-seven thousand. There was loud talk about free doings in the City of Brotherly Love, and I admonish the Senators from that State to bethink themselves what may betide Pennsylvania and her interests, if forty-seven thousand majority may melt away in the breath of a witness who will swear to a single instance in which inducement was given for a vote.

Again, if we adopt the rule that one bribe, instead of disabling the briber, as by statute it could be made to do, and instead of being ground of expelling the briber, altogether does away with the election, what difference does it make who gives the bribe? I beg the attention of Senators to this point. If an election falls because of one bribe, manifestly it must be because the bribe operates upon the election; it operates upon the proceeding itself. You overrule the election; you vitiate that. Does it matter, then, who pays the bribe? Need the particular person voted for, be *particeps criminis*? Not at all, as regards the election. His criminality, is important only when you come to expel him or to punish him.

If one bribe will destroy an election, the public is at the mercy of every gamester; every election is at the pleasure of one corruptionist, and by his permission. An opposing candidate, or any one of his partisans, may defeat the popular will. Whenever two candidates contest a congressional district, each may say, "I will plant a seed which will destroy the result, if my competitor succeeds. I will cause a bribe to be paid, or I will be able to make proof that a bribe was paid; and this will overthrow the whole proceeding." Is such a weapon to be put into the hands of lobbyists and strikers? Shall such an ingredient be introduced into the alchemy of politics, when the seething caldron already bubbles with gendering evils, and shall it be done in the name of public virtue?

Bribed votes in a legislature, are valid or they are void; they count, or they are blanks. The Supreme Court says they count. Both the reports in the case of Potter and Robbins say they count. The English rule holds that bribed votes do not count in a popular election. I read from Male on Elections, page 347:

> Besides the statutory provisions against this offense, every vote purchased by bribery is void by the common law of Parliament, the person who gave his vote under such influence being considered as though he had not voted at all.

Admit that the vote is void, as the most rigorous rule affirms, and then bribed votes being like votes cast blank, or not cast at all, must they not influence the result when deducted in order to undo it? Suppose ten stragglers wander into a legislature engaged in electing a Senator, and drop each a ballot in the box, and when discovered it turns out that all the members of the legislature voted, their votes elected, and the proceeding is complete, could it be held that the casting of the ten votes by the stragglers vitiated the election? But, on the other hand, if it were necessary to count the votes of the ten stragglers in order to make up a majority, and deducting them no

election would remain, we see how law and reason might vacate such a proceeding.

Cases of contested elections stud the annals of Congress from the beginning, and yet no hint has been given till now that one vote, not necessary in the count, can destroy an election. Such an idea seems never to have received the sanction of any mind in either House. A committee of the Senate has recently repudiated it. I read from a report in the case of Mr. CLAYTON, submitted by the Senator from Maine [Mr. MORRILL] and the Senator from Iowa, [Mr. WRIGHT.]

The views of the minority, submitted by the Senator from Georgia, [Mr. NORWOOD] agree with the report on the point I am now considering. I fear these "views of the minority" have worked some mischief in this discussion upon another point, however. We read of a doctor who, being told that he was killing the patient and must change the practice, said, "I cannot; I have written a book in favor of this practice." [Laughter.] I surmise that some preconceptions connected with these minority views, from which it is not pleasant to retreat, have exerted an influence here, and not upon the Senator from Georgia alone.

The report of the committee made by the Senator from Maine contains these words:

> It seems to us that upon principle we cannot enter upon the numberless inquiries which would always be suggested in cases of this character preceding the election of the members whose duty it is to elect a Senator, unless such conduct and transactions clearly relate to and bear immediately upon the alleged frauds connected with such Senator's election. Not only so, but it would seem that they must so color the transaction of the final election of the Senator as to lead to the conclusion that but for them the result would have been different. Thus, suppose Senator CLAYTON used reprehensible means with the hope of securing the election of some member or members in one or more districts, and such persons were either not elected or failed to vote for him, *or, if voting for him, he had a clear majority outside of those improperly elected, would any one say or claim that his seat could be declared vacant?*

Again says the committee:

> Sixth. He did not receive any votes under any such agreement, *and, least of all, any number sufficient to influence the result.* And hence we conclude that nothing can be plainer or more manifest than that this charge is totally and entirely unsustained.

Here is a plain affirmation, that purchased votes, to undo an election, must, at all events, be so numerous that without them the election would not have occurred.

I turn now to the views of the minority, submitted by the Senator from Georgia, and read:

> *And when a candidate bribes a sufficient number of the electors to secure his election,* he and they knowingly commit a fraud on the people, and by every rule of law any act done through combination of an agent with a third party to defraud the principal is void.

Again:

> And, third, that he obtained five other votes, *which made his majority, and were necessary to his election,* by giving to those electors as a consideration for their votes lucrative offices; and that this was as corrupt as if, for the same purpose, he had paid them money in kind.

Such was the law, as understood by majority and minority, when this report was submitted, first on the 10th of June, 1872, and again on the 26th of February, 1873.

What stress of occasion has led to the sudden discovery that a rule of law which only a month ago a committee pronounced too plain to be disputed, really has no existence at all, and that the true rule is exactly opposite? The discovery is so sudden, and so at war with reason, as it seems to me, that I must cling to the belief that bribery, to vitiate an election, must control it. Believing this to be the rule, I proceed to inquire whether, in the present case, votes were corruptly influenced which, when thrown out, would not leave legal and honest votes enough to uphold the election.

I regret that the honorable Senator from Ohio [Mr. THURMAN] is not present. After careful examination, as he said, to find how many votes were bribed, and how many votes changed would have defeated Mr. CALDWELL, he gave us his calculation. The figures given will, I fear, prove less reliable than from their forcible statement we had a right to expect. The Senator told us, with circumstance, and not without solemnity, that in his library he had read every word of the testimony, with his pencil in his hand. It has been said that one star differeth from another star in glory. So one Senator with a pencil in his hand, differs from other Senators in arithmetic. [Laughter.] The honorable Senator told us that 13 votes changed, would have defeated the election of Mr. CALDWELL. To show the importance of understanding the testimony, and the danger of putting trust in sharpened pencils, I ask Senators to open the volume before them, at page 362, and say by what feat of mathematics 13 votes deducted as corrupted votes, would reverse or defeat this election. Mr. CALDWELL received 87 votes; all others received 36 votes. Mr. CALDWELL's majority over all was 51. Twenty-six votes must have been changed to leave him without a majority. Twenty-six votes must have been taken from him, and given to his competitors, to leave him without a majority. The whole number of votes in the joint convention was 123; necessary to a choice, 62. Mr. CALDWELL's vote being 87, deducting 62, he had a majority of 25 more than were necessary. Would changing 13 of these votes change the result? No calculation, except of an eclipse, could so becloud the fact. He had 25 votes more than were necessary to a choice; deduct 13, and 12 votes remain—12 more than were necessary. Put the 13 on the other side, and 12 votes still remain above the needed number. Twenty-six must be found to have been bribed in order to leave no legal and honest majority.

There can be no escape from this if Daboll and the multiplication table are to be believed; and I bring it to attention, partly to show how carefully and how prayerfully the honorable Senator from Ohio pored over this testimony, and also to show incidentally what a poor judge of figures Daboll was. [Laughter.]

I call attention to another fact appearing on this page. There was no secret ballot; the vote was *viva voce*, every man rising in his place when his name was called and naming his candidate. Thus we know who voted for Mr. CALDWELL and who voted for others. Mr. Sidney Clarke, on his oath, denies that his name was withdrawn, or any votes transferred from him to Mr. CALDWELL, upon any understanding or corrupt agreement; yet votes originally for Mr. Clarke are suspected to have been bought. But if we deduct every vote in both houses cast for Mr. CALDWELL which had at any time been cast for Mr. Clarke, even then Mr. CALDWELL has a majority.

The Senator from Ohio, having fallen into the error of supposing that thirteen bribed votes would change the result, said he thought he could discover from the testimony that there was reason to believe that so many votes had been contaminated; but now, knowing that twenty-six is the smallest number which can affect the purpose, will it be contended that we can find on our oaths that so many members of the legislature of Kansas were bribed? Nothing approaching this has been intimated. The report negatives the idea. The report says that, taking all the evidence together, those who make the report believe that "some members of the legislature received money and others promises of money." The Senator from Indiana has put the case, because he was compelled by the facts to put it, upon the ground that a single instance of bribery is fatal. Surely he would not have assumed this extreme position, if the case had not required it.

But, Mr. President, we are advised not to work out the question of bribery by cold figures or cold facts, not to be particular, but to go largely on the ground that Mr. CALDWELL has no business here anyhow, whether he was elected honestly or not. Fault is found with the fact of his being selected at all, or being sent here, or ever thinking of coming here. His candidacy for the Senate is treated as an affront to the eternal fitness of things, and yet, at the same time, his whole conduct in the Senate has been strongly bepraised. The complaint seems to be that he was too obscure to be Senator. One Senator says he had "no political status;" another Senator says "he was unknown to political fame;" another says "he was only a business man." I will not conceal the surprise with which I listened to these comments. I supposed it was the boast of our system of government that every man, though he spring from the sod, has a right as much as any other man to surmount the last rung in the ladder of political distinction. I supposed American children were taught to strive to raise themselves to the highest honors of the Republic. What is meant by this talk of its being presumptuous for a business man to aspire to the Senate? I do not understand it. There is no hereditary peerage here; no aristocracy through which men obtain seats in the Senate. What must a man have done before he can be pardoned for raising his eyes to the Senate, and allowing himself to be named for a seat in it? What must be his antecedents? Must he have stood on the perilous edge of battle, and written his name in the purple testament of bleeding war? Must he have edited a newspaper, or two or three newspapers? Must he have made speeches at the hustings? Must he be a writer of essays? Must he have lectured in the lyceum? Must he belong to a learned profession? Must he be a phrase-monger? What is the standard of the honorable Senator from Ohio? Distinguished at the bar, that Senator rose to the bench, and having well worn the ermine, he went back to the bar, to reap golden harvests in the field below. But must all men wear such honors, before they can be considered as possible candidates for the Senate? Or, is it enough that a man among his neighbors and fellow-citizens stands well as a brave and honest soldier in the battle of life?

A Senator has just handed me papers, which, looked at on the instant, seem certificates of the past standing of Mr. CALDWELL. One bears date as far back as the Mexican war, and bears the signature of Franklin Pierce, who, by the by, was himself troubled with a plentiful lack of "political status." His mention for the Presidency, provoked one of the good sayings of that inimitable wit, Governor Corwin. The tidings being read in the hearing of a number of persons that Mr. Pierce was thought of for the nomination, Governor Corwin said solemnly, "Franklin Pierce proposed for the Presidency! Gentlemen, none of us are safe." [Laughter.] There being a firm of Pierce & Chapin, who made wagons in New England, when the papers reached that neighborhood announcing that Mr. Pierce had been nominated, a leading citizen said he was a democrat and was satisfied with Pierce, but he should have liked it better if it had been Chapin. [Laughter.]

Franklin Pierce and Winfield Scott, and others, seem to have signed these papers, and they certify the integrity, industry, and capacity of the man who undergoes a painful ordeal to-day. If these certificates be true, and Mr. CALDWELL had been elected without disreputable means, he might, I think, be pardoned the presumption of appearing here.

But, sir, Mr. CALDWELL is not indebted to himself, or to his merits, nor alone to his money, for being chosen Senator. It was not Mr. CALDWELL who was elected; as I read the evidence, it was the city of Leavenworth. What politicians know as "the shrieks of locality" prevailed in the election so largely that I am moved to say, as I have sometimes thought, that locality is perhaps the first element of American great

ness. When I remember all that fell to the lot of men because they lived south of Mason and Dixon's line, and all that befell men because they lived north of Mason and Dixon's line; when I remember the factitious importance given to the claims of locality, I repeat that in American politics, as a rule, locality is perhaps the first element of political success. Here is the code of Maryland, [holding up a volume.] Look at the importance which Maryland attaches to locality, and the will with which she orders the residence of her Senators. Here is a statute, in violation to the Constitution of the United States, in which stand these words:

One of the Senators shall always be an inhabitant of the Eastern Shore, and the other of the Western Shore of Maryland.

"My Maryland!" [Laughter.]

Leavenworth wanted a Senator; and all the cohorts, all the dwellers in Mesopotamia, in the hill-country and in the valley, rallied under the banner of Leavenworth! Then it was that Thomas Carney loomed into importance; he lived at Leavenworth. If two candidates were to be presented from Leavenworth, both would fail; division, would be destruction, and they would be buried in a common grave. Thus came the opportunity of Carney, the opportunity first to black-mail CALDWELL, and afterward to snap at him with less than the magnanimity of the reptile that rattles before it strikes.

So it happened that this man, little known in politics, widely known in business, largely acquainted in the State, came to be brought out by a published paper numerously signed requesting him to be a candidate.

Mr. President, I refer to these facts not to argue or suggest an approval or extenuation of the means employed to bring about the election. I bring them to the surface for the light they shed upon the wisdom and the safety of our undertaking to infer that bribes were given, because a business man from Leavenworth was elected, a man not conspicuous in the broad expanse of political notoriety. In this presence, or in any other, in this case or in any other, I would challenge as a heresy the notion that in this country any class or profession has monopoly or precedence in respect of places in the Senate or in the House, or in any political department. Intelligence and integrity are safe passports to responsible station, whether their possessor be lawyer, farmer, doctor, freighter, banker, tanner, rail-splitter, or boatman.

In the great State which honors me with a seat upon this floor I know hundreds of men never heard of in politics, business men, the latchet of whose shoes many a noted politician is not worthy to unloose—men who in either House of Congress would abundantly vindicate the wisdom of their choice.

If the character of Mr. CALDWELL was bad before his choice to the Senate, which I am told has never been suggested, let those who proposed him be arraigned and condemned, not for selecting a tyro in the game of politics, but for selecting a man, whether proficient or ignorant in politics, bad in character, and therefore unworthy and unfit. The propriety of Mr. CALDWELL'S aspirations for the Senate, in view of his mental or his moral endowments, is not a question for us; he must answer to the Senate for crimes against it, if he has done them, though he had ever before worn "the white flower of a blameless life."

I come now to an ugly feature of this case, which I must not overlook. Mr. CALDWELL paid a rival money to retire. I will not descant upon it. I condemn it utterly. It was gross, pernicious, immoral. If it shall ever find a defender or apologist, it will find neither in me. When Mr. CALDWELL did this act, love of safety, and love of duty, seem to have deserted him at once. No voice warned him—

To be thus is nothing,
But to be safely thus——

To undo the election, however, as declared by the resolution before us, this transaction must be bribery, and bribery of those who voted. So, too, had anybody else paid Carney, the effect would have been the same, precisely the same, as to the election, and the election is the only matter before us now. Had the Kansas Pacific Railroad or the Bank of England paid the money to Carney upon the same terms, the case would not be altered.

The question, then, at this point is, was the payment to Carney, bribery of the members of the legislature? What was Carney bribed to do? Not to vote. He had no vote. He was, I believe, a defeated candidate for that very legislature. At all events, Carney was not a member of the legislature. He was not bribed to die, or to remove, or to become ineligible, but to forbear activity in his own behalf and to support CALDWELL. Activity or importunity in one's own behalf, is in derogation of the public weal; and to forbear such activity, to forbear to electioneer, or beg for votes in one's own behalf, is meritorious. Support of CALDWELL, was not illegal, unless by illegal means. But it is said Carney was paid money to support CALDWELL. The written agreement does not show this, but I assume the fact to inquire where it leads us. Suppose a candidate imports a noted temperance man to speak to temperance men, or a noted tariff man to speak to tariff men, or a man known to be influential with a certain class of electors to speak or to missionary among the brethren; suppose he pays him $200 a day to make speeches; what effect upon an election would such a transaction have? I would no more take pay for making a political speech, than I would take pay for attending a funeral, or for signing a petition for a pardon, or a recommendation for appointment to office. But it seems I am wrong about this, for the practice has long prevailed, and is only mildly reprehended; and yet there is a strong family resemblance between it and the Carney affair. We have had morality distilled through an improved alembic in this debate. We have had laid down at length what is right and what is not, and we have heard no suggestion that there is impropriety in one man's paying money to another to make speeches urging his election, or in the other man's accepting money for going about disinterestedly to advise the people, "the dear people," for their own good, and tell them how they ought to vote, to consult their own interests. Those whose sense is finer than mine, may understand the difference between giving money to Carney to recommend and advise others to vote for a candidate, and giving money to Carney to utter himself as a public speaker to the same effect. It is my misfortune that I do not understand the whole breadth of the distinction. The honorable Senator from Ohio, after telling us that CALDWELL had no status, had rendered no service, and had no attainments justifying his aspirations for the Senate, affirmed that it was proper for Mr. CALDWELL to pay $5,000 to a newspaper to advocate him. Examine the morals here commended to us while in the act of condemning the payment to Carney! A man, said to be unfit to be Senator, but blessed with money, subsidizes and pays a newspaper to puff and magnify and recommend him as fit to be Senator, and all this with a view to win support of those who do not know him; and the proceeding is proper! I protest against this doctrine, and denounce the proceeding as dishonest. The payment of money to Carney, was more gross, but was it bribery of the legislature more than if an office had been promised to Carney? Suppose Mr. CALDWELL had said, "Mr. Carney, would you not rather have a foreign mission; would you not rather be governor of a Territory; would you not rather be an Indian agent?"—which, according to my friend from Nevada [Mr. STEWART] is "the potentiality of amassing wealth beyond the dreams of avarice"—"if so, I will obtain you one of these offices." Had that been the bargain, the public money would have paid Carney; CALDWELL has at least the redeeming fault of having paid his own money. Suppose Mr. CALDWELL had said, "Mr. Carney, my friends and myself will support you next year for governor of Kansas," and it had been so agreed, would that be bribery of the legislature of Kansas? Every statute and every legal definition says that bribery is "the gift or promise, either of money, office, or any other lucrative consideration."

But it is said that retiring Carney, influenced the legislature, because it reduced the number of candidates. As Carney has been presented to us, if an injury was inflicted upon Kansas by depriving her of a chance of sending Carney here, it was rough on Kansas. [Laughter.] There are toward half a million people in Kansas, and I hardly think no eligible person could be found because Carney withdrew. His withdrawal did, however, reduce the number of candidates. Casting lots, would do this also. Suppose Carney and CALDWELL had said, "Let us cast lots to see which shall withdraw; if we are both candidates we shall destroy each other; Leavenworth will have no Senator;" and lots had been cast. They would have resulted in favor of the one or the other, and one would have retired. Would that have been bribery of the legislature of Kansas? Again, suppose Mr. CALDWELL had said, "Mr. Carney, we cannot both be Senator; we must refer this to mutual friends; will you leave to the committee to say which of us shall be presented?" and it had been so agreed; it would have reduced the number of candidates, but would it have been bribery of the legislature of Kansas? Suppose CALDWELL had published libels on Carney and blackened him, suppose he had procured libels to be sworn to, knowing they were false, and thus Carney had been driven from the field, I ask, first, whether it would affect the validity of CALDWELL'S election; and second, would it be bribery of the legislature of Kansas? If CALDWELL had blackened the character of Carney, it would be infamous, it would be ground on which we might expel him if brought within our jurisdiction, but it does not therefore affect his election. Suppose CALDWELL had killed Carney in a rencounter; suppose he had challenged him to the field of honor, as it once was called, and slain him in a duel, to get rid of him as a rival; this would have diminished the number of candidates; it would have rendered it impossible to vote for Carney, which Carney's withdrawal did not do; it would have been infamous in CALDWELL, it might have enabled us to expel him; but could you, Senators, with your oaths upon you, decide that no election took place in Kansas because CALDWELL killed a rival before the day arrived?

We are not without authority upon the question whether paying money to Carney can be held bribery of members of the legislature.

It seems not to have been the ancient or the modern law of Parliament that paying a bribe to one man was bribery of another. Buying off a rival candidate, was held not to be bribery in an election. Under the British statutes against bribery, it was not held that paying a bribe to one man to influence the vote of another was bribery of that other, or bribery in an election in which the man paid had no vote. I read, from Male on Elections, a statute passed so recently as George III:

By the 49 George III, c. 118, (commonly called Mr. Curwen's act,) for preventing the obtaining of seats in Parliament by corrupt practices, after reciting that the promise of any gift, office, &c., to procure the return of any member to serve in Parliament, (if not given to the use of some person having a right to act as returning-officer, or to vote at such election,) was not bribery within the meaning of 2 George II, c. 24, &c.

The third persons there referred to, were not Carneys in a republican government, where no man dominates another. They were per-

sons belonging to a proprietary class, able, for special reasons, to control the suffrages of their tenants and dependents. The influence of money paid to one holding relations of control over a voter, is obviously greater than if they were equals; and yet, even in such a case, a recent and special statute was deemed necessary to attach a penalty to paying money to one not himself a voter.

I here take leave of the Carney transaction, reprobating it as disreputable and wrong, but believing it inapplicable to the question of the validity of the election, as distinguished from the unworthiness of Mr. CALDWELL himself.

I have done with this case. I leave it, believing that the discussion will do much to concentrate a burning focus of indignant public attention upon the groveling agencies which profane elections. The dormant forces of the State and national governments will, I hope, be roused. States should pass laws to punish the briber and the bribed, and Congress also should act. It may be declared, as the British statutes declare, that the briber shall be disabled, and he may be punished like other malefactors. A statute may forfeit the office when obtained by bribery, even when the successful candidate is innocent, and others pay the bribes. It may impose an oath upon every man on the threshold of both Houses, purging him of bribery; and taking the oath falsely, will be perjury, and ground for expulsion too. Such provisions will be a sad inscription on the statute-book, but not so sad, as a record in the Senate that morality in America has ebbed so low that we are forced to act without law and against law in despair of other methods. Above statutes, however, is public opinion. When a wholesome and rugged sentiment is awakened in this regard, men will no longer in their own behalf scuffle for place in the purlieus of legislatures and of nominating conventions; they will keep aloof; it will be disgraceful and fatal to appear electioneering and manipulating for themselves. They will wait until the office and the people seek them. But meanwhile, and always, we must adhere to the law, whether it works hardship or immunity in a particular case.

Mr. President, I have been brought to these conclusions, well knowing how some of them may grate upon the sensibilities of those, who, shocked at the drama of depravity enacted in Kansas, have not stopped to consider the mode in which it may be legally chastised. I am not unmindful of the disfavor to be earned by seeming to stand between transgression and retribution. Neither am I ignorant of the applause to be won now in the rôle of avenger and austere reformer. But we are only the sworn ministers of the law, and in our oaths is the *alpha* and *omega* of our duty. When we hear that a local court or jury in a trivial case, swayed by manifestations out of doors, and canvassing the popularity of the verdict or judgment to be rendered, has swerved from the law or the evidence, we dubiously shake our heads, lament the weakness of judges, and wonder whether, after all, the time has not come to abolish trial by jury.

Senators, let us, the elect of States, sitting as judges and jurors, see to it that here no sail is trimmed to catch a passing breeze of applause or acclamation. Let us see to it that no coward thought of praise or blame creeps into the wavering balances in which truth is to be weighed. When the din and sensation of this hour are forgotten, when we have left these seats forever, when the volume of our lives shall be closed, when the relics of these times shall be "gathered into History's golden urn," let there be found in this painful case a record showing that the American Senate was calm enough, firm enough, trustful enough to maintain the genius, the spirit, the methods and the safeguards of the Constitution as our fathers gave them to us.

Mr. FRELINGHUYSEN obtained the floor.

Mr. SCHURZ. I ask the Senator from New Jersey to yield to me for a single moment, and at the same time I would ask the Senator from New York to favor me with his presence for a moment. I desire to make a few remarks of a personal nature, called forth by an allusion made by the Senator from New York.

Mr. FRELINGHUYSEN. Very well, sir.

Mr. SCHURZ. It may be known to those Senators who read the Washington *Chronicle*, of this city, that on the morning of the day after I had addressed the Senate on this subject there appeared an article in the *Chronicle* severely criticising my speech, and stating that it was a well-known fact that this immaculate reformer was in the habit of receiving $200, and had done so in the late campaign, for the political speeches he made.

Mr. CONKLING. I never saw the article and never heard of it until this moment.

Mr. SCHURZ. I merely desire to say that the Senator, in all probability, if he did not see it in the *Chronicle*, it having been so widely scattered throughout the newspaper press of the country, has seen it in some other paper.

Mr. CONKLING. Never in connection with this case, and never lately.

Mr. SCHURZ. "Never in connection with this case, and never lately," but he has seen it.

Mr. CONKLING. In times past; yes.

Mr. SCHURZ. I was a little surprised, after all the friendly discussions that we have had during this winter, discussions so courteous after so arduous and bitter a presidential canvass, that the Senator should make an allusion in his speech which it seemed to me, as it must have seemed to every one who had seen these rumors, bore directly upon me when he spoke of one who made speeches advocating the cause of this or that party for $200 a day. I think it will be agreeable to the Senator to know that this entire story is an absolute and unmitigated fabrication, that the humble individual who stands before him not only did not ask or receive $200 for any of the speeches he made in the last campaign, but did not receive a single cent.

Mr. CONKLING. As the Senator is especially addressing me, shall I understand him now to refer to the last campaign alone, or does he mean by his statement to cover previous campaigns?

Mr. SCHURZ. The Senator knows very well that a little over a year ago charges of a similar nature were made against me in the *New York Times*, that I took occasion to reply to those charges upon this floor in every detail, and that I pronounced the charges connected with this subject, attributing to me the exaction of large sums and all that, unmitigated slanders.

As to the late campaign, I desire to say to the Senator, and take this opportunity of informing the Senate and those who may have seen the reports referred to, that not only did I not receive or exact or take $200, but not a single cent; and in order to inform the Senator more particularly still, so that when he shall have occasion to speak on this subject again he may know what is the truth, I will tell him that during that late campaign I received, unsolicited, uncalled for, unsuggested, a small remittance from liberal republican sources in New York to cover my outlays, which remittance covered about one-half of what I had paid myself out of my own pocket for campaign documents. Not only, I say, is that charge false, but whenever any compensation during that campaign was offered me, and it was so in perhaps a dozen instances, I uniformly refused to take a single cent.

But let me express my surprise that after a session like the one we have gone through, when the bitter controversies of the campaign seemed to have been utterlly forgotten, after we have carried on all the discussions occurring in this body in a courteous and friendly spirit, now at last, unprovoked, a Senator should feel called upon to make so insidious an allusion as that. I must confess that I do not understand the propriety of it, and I am surprised at the spirit of it.

This is what I have to say to the Senator from New York. I do not wish to engage in any personal discussion with him. We have had such before, and if I do not further interrupt the tenor of these debates by continuing such things now, the Senator knows very well that it is not from any apprehension of the consequences.

Mr. CONKLING. I ask the Senator from New Jersey to indulge me one moment.

The Senator from Missouri has chosen to seize upon this occasion to do two things: First, to exonerate himself from charges made against him. With that I have nothing to do; at least I should have nothing to do but for one fact, to which I will allude in a moment. Secondly, the Senator takes occasion to read me a lecture in regard to an argument or illustration I introduced to the Senate. I deny his right thus to criticise me, and I say to him that he puts himself in the attitude of assuming that he alone has been guilty of this practice, that it is so exceptional and exceptionable that it has not prevailed with others, but with him alone. However that may be, I say to the Senator that, whether he has or has not received $200 a night for speeches, I shall, on any occasion when a question in the Senate is to be tested by the inquiry, comment on the propriety of receiving money for such services. I shall ask, what are the distinctions between its receipt in such a case and in another? I have no apology to make to the Senator from Missouri, but I stand by the propriety and fitness of what I said.

One other word, Mr. President. If the honorable Senator from Missouri on this floor has ever denied that money was paid him for making speeches in past campaigns I did not hear it. I should grieve to hear it. I repeat, that the Senator may hear me, I should grieve to hear him deny that money has been paid to him in past campaigns for making political speeches. He forces me to say this because he arraigns me and reminds me that on a previous occasion he denied charges made in the *New York Times*. Yes, Mr. President, I heard him deny charges made in the *New York Times*. I did not hear him, and I venture to predict I shall never hear him deny in my presence that he has received money in past campaigns for making political speeches. I hope the Senator will not put me to the locality, the occasion, and the time. If he should, I might feel called upon to respond.

Mr. SCHURZ. The explanation given now by the Senator corresponds with the spirit of the original allusion. I did not say, and never have said, and never shall say, that in former campaigns I refused to take from political committees that which was to compensate me for the expenses I had myself incurred. Neither do I think that many men, not in official position, if any, have ever declined to accept such re-imbursement. Neither do I think there is any impropriety in it. A year ago last January I stated on this floor that during fifteen years of campaigning, having spoken in almost every State of the Union outside of the Southern States, being myself poor and having no money to spare, but devoting week after week, and month after month, to campaign work, I not only did take, but had a right to take, nay, was obliged to take, compensation for my services equal to the expenses which I incurred, for the simple reason that, without it, it would have been impossible for me to do that work to which I was invited and urgently pressed.

I have not at this moment before me the *Globe* containing the remarks to which I have referred, but deferring the reading until I shall obtain it I wish to address another word to the Senator from New York, and then let us test the decency of his personal allusion on this

occasion. I have no fault to find with the tone of any argument that he has made. He is at perfect liberty to make any argument he pleases; but when he interrupts the amenities of our debates in a manner entirely unprovoked, to make so insidious an allusion to slanders which have been circulated about one Senator on this floor, I ask him, what would he think if within these days a rumor had been spread in the newspapers charging him with having received $10,000 as a fee from the Central Pacific Railroad to represent their interests, and if I in a speech made an allusion to that fact, and made it in such way as to point to him? Would he not question the right and the decency of such an act?

Mr. CONKLING. If the Senator likes me to answer——

Mr. SCHURZ. Yes, sir.

Mr. CONKLING. I would rise to denounce as a liar any man who made the statement, and I would authorize the Senator to say to any man who told him so that he lied, and to refer him to me; but I should not find fault with the Senator for hearing the rumor, or for making a remark which had nothing in the world to do with it, which I chose to take to myself, upon the principle that a hit bird flutters.

Mr. SCHURZ. Precisely. Then, sir, I will accept the Senator's own statement, and I will say that those from whom he took the information upon which that allusion is based lied, and I authorize him to tell them so.

Mr. CONKLING. Let me understand that. Does the Senator authorize me to tell any man he lies who says now that, in past campaigns, specific sums, so much a speech, have been paid to and received by the Senator from Missouri?

Mr. SCHURZ. I authorize the Senator to tell every man that he lies who in the first place charges me with having received $200 for any——

Mr. CONKLING. I have not said $200.

Mr. SCHURZ. Stop; I have the floor now—with having received $200 for every or any speech in the late campaign; and then I authorize him to charge the man who denies the truth of the statement I am now going to read as a liar again. That will cover the case, I think; will it not?

Mr. CONKLING. I wish to thank the Senator for the very direct and luminous answer he has given to the question.

Mr. SCHURZ. I think it will be still more luminous in a little while. Here it is, and if the Senate will now permit me to read, then the Senator from New York will get as much light upon the subject as he needs to discharge the duty as he himself defined it. I read from the *Congressional Globe*, January 8, 1872:

> The second charge is that in the national campaign of 1860 I refused to make any speeches unless I was paid $250 a week, and then an additional sum by the local committees, varying from $50 to $100 for each speech. This is a falsehood again. I commenced canvassing the United States in that campaign on the 1st of July, having already made several speeches previously, and continued till the day of election, the 6th of November, with the exception of about ten days, when I was utterly broken down by fatigue and had to take some rest. I spoke in the States of Wisconsin, Illinois, Missouri, Indiana, Ohio, Pennsylvania, New York—

Where I had the honor to speak from the same platform with the Senator—

> New Jersey, and Connecticut, traveled a great many thousands of miles, and made, if I remember correctly, between one hundred and sixty and one hundred and seventy speeches; and when I had returned home from those labors I found that all the compensation I had received from committees fell quite perceptibly short of my actual expenses—railroad fare and those incidental outlays connected with traveling of that nature.
>
> Moreover, having given myself entirely up to the labors of the campaign, completely neglecting my private affairs, I found myself surrounded by disagreeable embarrassments, which resulted finally in painful sacrifices, and if I had received only one-fifth part of what the *Times* charges me with, I should have overcome those embarrassments easily. I do not hesitate to say, however—and I refer to this because mention has been made of this subject in debate in the Senate—that, as a prudent man, I ought to have done something like that which the *Times* charged upon me, although, of course, in a more moderate degree; for I believe that gentlemen may be expected to go out at their own expense, and make a speech now and then in promotion of a political cause; but when they are called upon to go from campaign into campaign year after year, for several months at a time, utterly neglecting their private affairs, giving themselves wholly up to the work, unless they are entirely independent in fortune, they cannot afford to do so without re-imbursement and compensation. I will say, further, that in a few subsequent campaigns, when lists of appointments covering weeks and months were sent to me, I did to some extent protect myself in that respect, in a moderate way, however, while in other campaigns I neglected, even after my previous experiences, to look after my private interests.
>
> Moved by curiosity, after having read the *Times's* article, I undertook to figure up how much time I had spent in public speaking for the republican cause since 1856, and I found it to be from seventy to seventy-two weeks, or about a year and five months; and adding up also all that I received from the committees during that whole time, I find that it amounts in the aggregate to less than a popular lecturer will earn in three weeks.
>
> I mention this subject merely, although it is a very humiliating one, because it shows the meanness of the warfare which is carried on against certain members of this body. It is humiliating, I say, to make such a statement; but it is still more humiliating that a paper, the organ of an administration which stands at the head of a party that has been built up in its power gradually and laboriously by just such labors as those in which I, with many others, was engaged, should make such explanations necessary.

If the Senator from New York will take this statement, together with anything I said about the other story, and find anybody to contradict it, I authorize him to say that he lies.

Mr. CONKLING. Mr. President, I will take leave of this subject by saying that the remark I made contained no allusion to the Senator from Missouri, although I had seen in the papers—not recently, however—that money had been charged by him, and paid to him, for making political speeches. I had heard of it in other cases also, and in my remark there was no allusion to him. I put it as one of several cases, to test a distinction; I introduced it as an argument which I believed then and believe now just and fair. The Senator from Missouri, who has seen recently in the papers something I have not seen, took it for granted, in consequence of articles he has read, that I was traveling out of my way to make an assault upon him, and accordingly he has brought the matter up. I have only to add that, notwithstanding the somewhat tart remark, and, as I think, grossly improper insinuation he made at one point of his observations, I had and I have no feeling of personal unkindness toward him; and had the Senator not called attention to this subject it never would have occurred to me that he thought or supposed that I was selecting him or making an attack upon him.

Mr. SCHURZ. Mr. President, I should be very glad to take the explanation now made by the Senator from New York as it is given; but I am very sorry to say that when an allusion is made with such particularity as this was made, the allusion can hardly have not been intended to have some personal bearing. When the Senator from New York says that he has no personal feeling against me I am sure that I have given no cause for any; that my conduct upon this floor, my tone in debate, my personal discussions, with whatever Senator it may have been, have not been of such a character as to provoke any personal unkindness. But I again bring home to him that if I had made such a remark as I alluded to with regard to taking a fee from a railroad company, which it would be very far from me to do—if I had made such a remark upon the ground of statements circulated by the newspapers, I would not call it improper on the part of the Senator from New York, if he called the attention of the Senate to it. I should call it very proper indeed if he should hold me to account for it in the strongest language he could command. I know how personal allusions are made in speeches; and when the Senator made his allusion my mind could not escape the conclusion, nor could the mind of any Senator acquainted with the circumstances, that that allusion was meant for me. If he now says that it was not, very well; let it go. I do not want to have any personal controversy with any one on this floor. I do not shrink from it when it is forced upon me; but I certainly do not seek it when there is no provocation.

Mr. CONKLING. The Senator evidently wants the last word; but at the expense of prolonging an unworthy matter, I venture to make another observation. I mean what I have said. I mean to let it stand. I differ with the Senator when he affirms that he has done nothing calculated to awaken in me any feeling unfriendly to him. I, too, know the modes by which a man by covert insinuation, not bold, manages to say what the Senator has now said, for example, and then shrinks from it and disclaims a willingness to say it. I know how, during the last session of Congress, I, in common with others, was covered with insinuations and with accusations, false in fact, which the Senator had no right to make, and which, as much as any other, he was art and part in. Therefore he must pardon me for dissenting when he says that he has so conducted himself in the Senate as to provoke the resentment of no man.

The Senator a moment ago seemed to intimate some doubt as to my sincerity, when I said that my remark did not single him out. The fact that the Senator deems it proper to feel such a doubt and to suggest it, not only forbids my saying anything further to relieve him, but, had he suggested such a doubt in season, I would certainly not have uttered even the qualifying words which I did.

Mr. SCHURZ rose.

Mr. CONKLING. The Senator wants the last word. I promise him that he shall have it, because whatever he may say I will not be led further in this dialogue.

Mr. SCHURZ. Mr. President, when the Senator from New York got up and said I wanted to have the last word, it seemed to me that he rather insisted upon having it himself. Now, when the Senator alludes to debates we had during the last session, I am sure that I have no reason to retract a single word I then said. But I think also that, a long time having elapsed between that period and this, a bitter campaign having been gone through with, and we having met here again, months ago, again on friendly terms, and having passed through three or four months of animated but courteous debate, then it is extraordinary indeed that a Senator should feel called upon to indulge in such flings as have fallen from the lips of the Senator to-day.

I am rather glad to see him abandon the explanation he gave us once this evening, that he had not intended any allusion to me. I am glad he retracted that, for had he not placed the matter in the right light, I would. And there I will let this case rest.

Mr. CAMERON. Mr. President——

The VICE-PRESIDENT. The Senator from New Jersey is entitled to the floor.

Mr. CAMERON. The Senator from New Jersey has been kind enough to allow me to rise to what I believe to be a privileged question.

The VICE-PRESIDENT. The Senator from Pennsylvania will proceed.

Mr. CAMERON. Mr. President, as the Senate well know, my voice is not a very strong one, and I rise, therefore, with some fear that I shall not be heard or understood in the prevailing storm which is raging.

Mr. SHERMAN. I hope order will be preserved.

The VICE-PRESIDENT. The Senator from Pennsylvania will pause. Senators will be good enough to resume their seats. Order must be preserved in the Senate.

Mr. CAMERON. When I came into the Senate this morning, rather late, from my committee-room, I found the Senator from Maryland [Mr. HAMILTON] making a speech, a part of which I heard, and only a small part. I found my name mentioned, and I took the liberty of going to our excellent reporter and asking him to give me a copy of what was said by the Senator from Maryland in regard to myself. He did so, and I will read it if the Senate will allow me to do so.

Mr. CARPENTER. It is impossible for the Senator to be heard in the prevailing storm which is beating on the glass roof above us. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

After forty-four minutes spent in executive session, the doors were re-opened.

Mr. FERRY, of Michigan. I move that the Senate do now adjourn.

The motion was agreed to; there being, on a division—ayes 29, noes 22; and (at four o'clock and twelve minutes p. m.) the Senate adjourned.

IN THE SENATE.

FRIDAY, *March* 21, 1873.

The Senate met at half past ten o'clock a. m.

Prayer by Rev. J. P. NEWMAN, D. D.

The journal of yesterday's proceedings was read and approved.

FINANCES.

Mr. FENTON. Mr. President, I offer the following resolution:

Resolved, That the Committee on Finance be directed to inquire what measure or measures can be adopted by the Government which shall give to the country a currency convertible into gold at the will of the holder, thus securing greater stability in the exchanges of trade, in the work of production and investment, and in the compensations of labor; and to report, by bill or otherwise, at the next session of Congress.

Mr. CAMERON. I ask that that resolution lie over.

Mr. FENTON. Anticipating, under the practice of the Senate, that there might be some objection to the consideration of this resolution to-day, I ask that it may lie over and be printed.

The VICE-PRESIDENT. That order will be made, if there be no objection.

CLERK OF CLAYTON INVESTIGATING COMMITTEE.

Mr. WRIGHT. I offer the following resolution:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay the clerk of the special committee of the Senate, appointed to investigate charges against Hon. POWELL CLAYTON, the usual per diem compensation of clerks to committees, from the 1st to the 31st day of March, 1873, inclusive.

The resolution was considered by unanimous consent and agreed to.

THE CONGRESSIONAL RECORD.

Mr. SHERMAN. I rise to submit a resolution which I suppose will be adopted without objection, (and, if there be no objection, the Secretary can reduce it to form,) that the Public Printer be directed to furnish to each Senator two copies of the CONGRESSIONAL RECORD, complete and bound, at the end of this called session. I suppose there will be no objection to it, as it is necessary to have them. No Senator now has a complete file of the RECORD, (at least, I suppose other Senators are like myself,) and my resolution is that two bound copies be furnished to each Senator at the end of the session.

Mr. CASSERLY. Bound in cloth?

Mr. SHERMAN. Bound in the ordinary way. Let the Public Printer have his own way of binding them.

The VICE-PRESIDENT. The motion should go to the Committee on Printing, but that reference may be dispensed with by unanimous consent.

Mr. CAMERON. I object. I think it had better go to the Committee on Printing.

Mr. SHERMAN. Very well; let the resolution go to the committee, if that is deemed necessary.

Mr. CAMERON. I am opposed to increasing our printing. We have no right to frank documents, and so we ought not to print them.

The VICE-PRESIDENT. The resolution will be referred to the Committee on Printing.

RULES LIMITING DEBATE.

Mr. WRIGHT. I wish to inquire if the resolution I offered yesterday does not come up. I have nothing to say upon it at all; I merely ask that it be referred to the Committee on Rules.

Mr. MORTON. I suggest to my friend from Iowa that he allow that resolution to lie upon the table until after the CALDWELL case is disposed of. I think the resolution, if taken up, will only occupy the time of the Senate without result. I trust the debate on the pending question, the case of the Senator from Kansas, will be allowed to progress until it shall be concluded. I see the Senator from New Jersey [Mr. FRELINGHUYSEN] in his place who had the floor last night.

Mr. WRIGHT. I certainly have no disposition on earth to interfere with the debate on the Kansas case. I have surely not given any evidence of such a desire. I did not suppose there would be any objection to the reference of this resolution. If debate is to follow, I shall not press it until the matter now before the Senate is disposed of. I simply ask that the resolution be referred to the Committee on Rules. If there can be any objection to that, if discussion is to follow, I shall not press it at this time.

Mr. MORTON. Let me say to my friend that I think discussion will follow, from the fact that there are some members of this body who are so much opposed to any resolution of this character that they are unwilling even to countenance it by a reference. The Senator has had some evidence of that already. I think debate will follow on this resolution, and therefore I call for the regular order.

Mr. WRIGHT. I understood the Senator from Ohio [Mr. THURMAN] to ask me the other morning why I did not offer such a rule as I proposed, and have it referred to the committee as a matter of course. I have pursued that very course, and supposed this proposition would be referred to the committee as a matter of course.

Mr. THURMAN. No; the Senator misunderstood me. I perhaps spoke in less perspicuous language than I am accustomed to use, but that was not my meaning. I said there was no necessity to make that inquiry, that the Senator could offer amendments to the rules himself, and the usual practice in such a case was that they would go to the committee; but not necessarily that they would go there. I said then, if he offered them himself, we would see in what form the thing came, and if it came in a form that the Senate would not adopt at all, that the Senate would not have anything to do with, of course the Senate would not take the trouble to send it to a committee. I do not wish, however, to take up time on this matter now. I hope the regular order may not be interfered with by this proposition, for which there is no pressing necessity. It can be considered after the regular order is disposed of if necessary, or at the beginning of the next session, just as well as now.

Mr. SHERMAN. The motion is exactly in order, because during the morning hour the real thing that is pending is resolutions on the table, which are in the nature of morning business.

Mr. THURMAN. Have we a morning hour at an executive session like this?

Mr. SHERMAN. I wish to state to my friend from Iowa, with whose object I sympathize heartily, and also to my colleague and other members of the Senate, that this matter of the adoption of a rule to regulate the order of business and debate, it is true, cannot be disposed of at this session, but it must be disposed of at the next session. My colleague said the other day that we got along very well during the last session. I say we did not. I say that more than two-thirds of the last session was consumed in unnecessary debate, and the business of this country to-day suffers from the conduct of the Senate during the last session. Why, sir, we were not able to consider the great question of the currency and the public debt. My colleague, who is opposed to all rules to cut off debate, suddenly sprang a motion to lay on the table one of the most important bills offered at the last session, without debate, without any opportunity to debate. A temporary majority can cut off debate at any time by a motion to lay on the table, and thus defeat important measures. Everybody feels at this moment, every business man in the country feels, that the business interests of the country are suffering, because of the want of action at the last session of Congress one way or the other on that important subject. Our currency is depreciating daily in the transaction of business.

Take, again, the case of Louisiana. There is a people that I do believe from the bottom of my heart are suffering under a government that is irregular in many respects; and we could not dispose of the Louisiana question, a question involving the safety and character of a State, and perhaps the peace of the country, because time was unnecessarily consumed here in debate, not only on that question but on other questions.

We did at the last session nothing that affects the great interests of this country. All we did at the last session was to pass the appropriation bills, and nothing could be got through of a general character unless it was thrust on the appropriation bills.

Sir, I believe in the freedom of debate. I believe I can call on Senators to testify that I have never endeavored to suppress debate where it was upon the subject-matter and conducted in the ordinary way. But, sir, I say that three or four or five members of the Senate may prevent the business of the country from being transacted; they may defeat any measure. Take a case, in regard to which my colleague will sympathize with me, the case of the steamboat law, which affects an interest of hundreds of millions of dollars of property in this country and the commerce of the great rivers.

Mr. HOWE. Mr. President, I rise to a question of order. I do not know what the pending question is; but I rise to submit, not so much to the Chair as to the Senator from Ohio, that the line of remark he is pursuing I think tends toward legislation. If so, I certainly think, under the rule that was adopted last week at his instance, he is out of order to-day. [Laughter.]

Mr. SHERMAN. Now, I am going to illustrate how utterly independent of the rules of order any Senator on this floor is. What do I care for your rules of order? On this very question I could make a dozen motions upon which I could speak for two days if my physical strength would hold out. I could move to postpone the question and discuss that. I could make the debate that I am now making on the proposition to declare the election of Mr. CALDWELL invalid. I could make it in any way. I could talk about anything, and no motion can prevent me. Why, sir, I may talk about the recent trouble in the